

**Plaintiffs' Memorandum in Opposition
to Joint Motion for Summary
Judgment for Failure to Prove Fault
Element of Public Nuisance Claims**

Ex 5 – Hartle Tr. (7-31-18) Excerpts

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____
8) Case No.
9)) 1:17-MD-2804
10)
11)
12 THIS DOCUMENT RELATES) Hon. Dan A.
13 TO ALL CASES) Polster

14

TUESDAY, JULY 31, 2018

15

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
16 CONFIDENTIALITY REVIEW

17 - - -

18 Videotaped deposition of Nathan J.
19 Hartle, held at the offices of Covington &
20 Burlington, LLP, One City Center, 850 Tenth
21 Street Northwest, Washington, DC, commencing
22 at 9:04 a.m., on the above date, before
23 Carrie A. Campbell, Registered Diplomate
24 Reporter, Certified Realtime Reporter,
25 Illinois, California & Texas Certified
 Shorthand Reporter, Missouri & Kansas
 Certified Court Reporter.

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<p>1 O'Croinin, CVS.</p> <p>2 MS. MONAGHAN: Meghan Monaghan,</p> <p>3 Covington & Burling, on behalf of</p> <p>4 McKesson and the witness.</p> <p>5 MS. HENN: Emily Henn,</p> <p>6 Covington & Burling, on behalf of</p> <p>7 McKesson and the witness.</p> <p>8 VIDEOGRAPHER: Via telephone?</p> <p>9 MS. PEDROZA: This is Monica</p> <p>10 Pedroza on behalf of Teva</p> <p>11 Pharmaceuticals USA, Inc., Cephalon</p> <p>12 Inc., Watson Laboratories, Inc.,</p> <p>13 Actavis, LLC, and Actavis Pharma, Inc.</p> <p>14 MR. LAVELLE: John Lavelle on</p> <p>15 behalf of Rite Aid.</p> <p>16 MR. MONTMINY: Brendan Montminy</p> <p>17 on behalf Henry Schein, Inc., and</p> <p>18 Henry Schein Medical Systems, Inc.</p> <p>19 MR. AUBEL: Bill Aubel, Jackson</p> <p>20 Kelly, on behalf of Miami-Lukens, Inc.</p> <p>21 MR. WEINBERGER: Pete</p> <p>22 Weinberger on behalf of the</p> <p>23 plaintiffs.</p> <p>24 VIDEOGRAPHER: The court</p> <p>25 reporter is Carrie Campbell, who will</p>	<p>Page 14</p> <p>1 deposition taken before?</p> <p>2 A. 20 years ago when I -- when I</p> <p>3 worked at a previous employer for a theft</p> <p>4 case, investigative.</p> <p>5 Q. So if you'll bear with me,</p> <p>6 we're going to do a little bit of paperwork</p> <p>7 to start -- to start off.</p> <p>8 A. Okay.</p> <p>9 Q. The first thing is, is are you</p> <p>10 aware that today you'll be testifying not as</p> <p>11 Nate Hartle but as McKesson Corporation?</p> <p>12 A. I am.</p> <p>13 (McKesson-Hartle Exhibit 1</p> <p>14 marked for identification.)</p> <p>15 QUESTIONS BY MR. FARRELL:</p> <p>16 Q. I'm going to have marked and</p> <p>17 show you McKesson 30(b)(6) Document 1, and</p> <p>18 this is the first notice of deposition that</p> <p>19 was filed in this case.</p> <p>20 Have you had a chance to review</p> <p>21 this document before today?</p> <p>22 A. I do. I have copies of this.</p> <p>23 Q. And you understand that today</p> <p>24 I'll be asking you questions about the</p> <p>25 subject matters that are in Exhibit 1, and</p>
<p>1 now administer the oath to the</p> <p>2 witness.</p> <p>3</p> <p>4 NATHAN J. HARTLE,</p> <p>5 of lawful age, having been first duly sworn</p> <p>6 to tell the truth, the whole truth and</p> <p>7 nothing but the truth, deposes and says on</p> <p>8 behalf of the Plaintiffs, as follows:</p> <p>9</p> <p>10 DIRECT EXAMINATION</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Good morning.</p> <p>13 A. Good morning.</p> <p>14 Q. Please state your name.</p> <p>15 A. My name is Nathan -- I go by</p> <p>16 Nate -- John Hartle.</p> <p>17 Q. And what is your occupation,</p> <p>18 and who is your employer?</p> <p>19 A. I'm currently a vice president</p> <p>20 of regulatory affairs and compliance for</p> <p>21 McKesson Corporation.</p> <p>22 Q. How long have you been employed</p> <p>23 by McKesson?</p> <p>24 A. Since May of 2014.</p> <p>25 Q. Have you ever had your</p>	<p>Page 15</p> <p>1 McKesson has been kind enough to designate</p> <p>2 you as its spokesman to answer these</p> <p>3 questions?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: I understand.</p> <p>6 (McKesson-Hartle Exhibit 2</p> <p>7 marked for identification.)</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. There's a second notice. We'll</p> <p>10 have that marked as Exhibit 2, and it's MCK</p> <p>11 30(b)(6)_02.</p> <p>12 Have you had a chance to review</p> <p>13 this document before today?</p> <p>14 A. I have.</p> <p>15 Q. Now, it's my understanding that</p> <p>16 McKesson has designated you to testify on</p> <p>17 certain subject matters within this document</p> <p>18 but not all.</p> <p>19 Is that your understanding?</p> <p>20 A. Correct.</p> <p>21 Q. And those numbers are numbers</p> <p>22 9, 14, 16, 17, 18, 19, 20, 21 and 22.</p> <p>23 Is that your understanding as</p> <p>24 well?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 34</p> <p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. Have you read this document in preparation for today's deposition?</p> <p>3 A. Did I have it in the past?</p> <p>4 Q. No.</p> <p>5 In preparation for today's deposition, have you read this as McKesson's corporate designee?</p> <p>6 A. I did not read this specific right before the deposition.</p> <p>7 Q. So it's not -- it's not a memory contest --</p> <p>8 A. Right.</p> <p>9 Q. -- and that's why I brought the documents --</p> <p>10 A. Right.</p> <p>11 Q. -- so that -- so that we can talk about some of the subject matters.</p> <p>12 The first thing I'd like you to do is turn to the Bates stamp page 7. And you'll notice that there are two columns, and in the bottom right-hand corner the paragraph heading number 2.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p>	<p>1 regulated supply chain and use the information to ferret out potentially illegal activity."</p> <p>2 Q. Does McKesson acknowledge that it has a duty under the reporting requirement?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: Acknowledge that we -- we, as part of the designing and operating the suspicious order system, have to report suspicious orders.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. That wasn't my question.</p> <p>7 My question is: Does McKesson acknowledge the reporting requirement, as you just read aloud, is a duty owed by McKesson under the federal regulations and United States Code?</p> <p>8 MS. HENN: Objection to form.</p> <p>9 THE WITNESS: And it's our responsibility to report suspicious orders.</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. So the answer to my question is yes --</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. And midway down through, you'll see that in the parentheses it says the "reporting requirement."</p> <p>2 A. I see that.</p> <p>3 Q. Do you see it?</p> <p>4 A. I do.</p> <p>5 Q. And then immediately after that, it describes what the reporting requirement is. And I don't know if you do better reading it aloud or reading it to yourself.</p> <p>6 Would you like me to read it, or would you like to read it?</p> <p>7 A. I can read it.</p> <p>8 Q. All right. Starting with "the reporting requirement is a relatively modest one," will you finish the sentence?</p> <p>9 A. I read that sentence.</p> <p>10 Q. Okay. Now, will you read it aloud?</p> <p>11 A. "It requires only that a distributor provide basic information about certain orders to DEA so that DEA investigators in the field can aggregate reports from every point along the legally</p>	<p>1 A. Yes.</p> <p>2 Q. -- no, or I don't know.</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: It is our -- yes.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Okay. Now, I want you to go down, and if you actually flip the page, we'll cheat to the end, and it's the end of the first sentence in the top left-hand corner. In parentheses it says, "The shipping requirement."</p> <p>7 Do you see that?</p> <p>8 A. Where am I looking again?</p> <p>9 Sorry.</p> <p>10 Q. Very top left-hand corner there's a --</p> <p>11 A. Okay. Shipping requirement. I see that.</p> <p>12 Q. All right. Now what we're going to do is go to the beginning of that sentence on the previous page, and it's the last full sentence. It starts with "once a distributor has."</p> <p>13 Do you see that sentence?</p> <p>14 A. I see that.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Now I'm going to give you a 2 chance to read it without -- and digest it 3 for a second.</p> <p>4 A. I've read that.</p> <p>5 Q. All right. Now, can you read 6 it aloud for the record?</p> <p>7 A. "Once a distributor has 8 reported a suspicious order, it must make one 9 of two choices, decline to ship the order or 10 conduct some due diligence, and if it is able 11 to determine that the order is not likely to 12 be diverted into illegal channels, ship the 13 order."</p> <p>14 Q. Does McKesson acknowledge that 15 the shipping requirement is a duty it owes 16 under the United States Code and the Code of 17 Federal Regulations?</p> <p>18 MS. HENN: Objection to form.</p> <p>19 THE WITNESS: Yes.</p> <p>20 (McKesson-Hartle Exhibit 5 21 marked for identification.)</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. We'll come back to this later.</p> <p>24 All right. The next document 25 we're going to reference is MCK 30(b)(6)_5.</p>	<p style="text-align: right;">Page 40</p> <p>1 Prevention and Control, Subchapter 1, Control 2 and Enforcement, Part A, Introductory 3 Provisions, this is the beginning of the 4 Controlled Substances Act.</p> <p>5 McKesson is aware of and 6 acknowledges that its role in the chain of 7 distribution of opioids is governed by the 8 Controlled Substances Act, agreed?</p> <p>9 MS. HENN: Objection to form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Now, I'm going to have you look 13 down all the way at all those letters and 14 numbers at the very bottom, Public Law 15 91-513, Title 2. And the date there is 16 October 27, 1970.</p> <p>17 McKesson is aware that the 18 Controlled Substances Act has been in force 19 and effect since 1970, correct?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 THE WITNESS: Correct.</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. So Section 801, which is on the 24 first page, is Congressional findings and 25 declarations regarding controlled substances.</p>
<p style="text-align: right;">Page 39</p> <p>1 And so to make this easy so I don't have to 2 say all those letters and numbers, as we move 3 forward I'm just going to refer to it exhibit 4 such-and-such.</p> <p>5 A. Okay.</p> <p>6 Q. And when I do, we're talking 7 about the exhibit for this deposition.</p> <p>8 I'm going to represent to you 9 that there are four pages to this exhibit, 10 that you won't find this exhibit anywhere on 11 the Internet because I made them myself. I'm 12 going to give you a second to flip through 13 them, and what I'm going to represent to you 14 is that these are four different provisions 15 from four different United States Code 16 provisions. So I'll give you a second to 17 review.</p> <p>18 A. Okay.</p> <p>19 Q. So the first thing I want you 20 to take note of on Exhibit 5, page 1, is the 21 top left-hand corner, which is the great seal 22 of our United States Congress.</p> <p>23 And if you look under the 24 United States Code, Title 21, for food and 25 drugs, under Chapter 13, Drug Abuse</p>	<p style="text-align: right;">Page 41</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And it says, "The Congress 4 agrees makes the following findings and 5 declarations."</p> <p>6 And to be fair, paragraph 1, 7 will you read it aloud?</p> <p>8 A. "Many of the drugs included 9 within this subchapter have a useful and 10 legitimate medical purpose and are necessary 11 to maintain the health and general welfare of 12 the American people."</p> <p>13 Q. Does McKesson acknowledge and 14 agree with that finding?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. Now, will you read Section 2 19 aloud, please?</p> <p>20 A. "The illegal importation, 21 manufacture, distribution and possession and 22 improper use of controlled substances have 23 substantially and detrimentally effect -- 24 have a substantial and detrimental effect on 25 the health and general welfare of the</p>

<p style="text-align: right;">Page 42</p> <p>1 American people."</p> <p>2 Q. Does McKesson acknowledge and 3 agree with those findings?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. So you'll notice in paragraph 2 8 it includes distribution, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And McKesson is engaged in the 11 distribution business, agreed?</p> <p>12 A. We are.</p> <p>13 Q. And that if they do not follow 14 the law as provided by the US code and the 15 Code of Federal Regulations, it has a 16 substantial and detrimental effect on the 17 health and general welfare of the American 18 people, agreed?</p> <p>19 MS. HENN: Objection to form.</p> <p>20 THE WITNESS: Could you restate 21 that question for me, please?</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. Yeah.</p> <p>24 You agree with paragraph 2 --</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. That's what it says, correct.</p> <p>2 Q. Does McKesson agree and 3 acknowledge that finding?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. Now, if you flip to page 2, 8 this is section A 12 of the Controlled 9 Substances Act, and what it says is it places 10 drugs into one of several categories.</p> <p>11 Is McKesson aware of the 12 scheduling of controlled substances?</p> <p>13 A. We are.</p> <p>14 Q. Okay. And what we're dealing 15 with in this litigation primarily today are 16 Schedule II drugs, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Now, there was a period of time 19 when certain hydrocodone combination products 20 were Schedule III, but they've since been 21 reclassified as Schedule II, agreed?</p> <p>22 A. Agreed.</p> <p>23 Q. And McKesson picked up a book 24 of business when that happened on the HCPs, 25 agreed?</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. -- as McKesson's 2 representative, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And what it says is that the 5 illegal, and one of the words is 6 distribution, of controlled substances has a 7 substantial and detrimental effect on the 8 health and general welfare of the American 9 people.</p> <p>10 I'm asking you if McKesson 11 agrees and acknowledges with this finding by 12 Congress in 1970.</p> <p>13 MS. HENN: Objection to form.</p> <p>14 THE WITNESS: Yes, that the 15 illegal distribution can -- could 16 potentially have an impact on the 17 American --</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Well, it doesn't say 20 "potential" in paragraph 2, does it?</p> <p>21 A. It doesn't.</p> <p>22 Q. It says that if you break the 23 law, it has a substantial and detrimental 24 effect on the health and general welfare of 25 the American people.</p>	<p style="text-align: right;">Page 45</p> <p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: Can you rephrase 3 the book of business and the question 4 a little bit?</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Yeah, that was a little too 7 country.</p> <p>8 Is McKesson aware that its 9 sales of hydrocodone combination products 10 rose following the reclassification of those 11 opioids from Schedule III to Schedule II?</p> <p>12 A. Yes.</p> <p>13 Q. So nonetheless, when we're 14 talking about these products, I'm referencing 15 Schedule II for today.</p> <p>16 A. Understood.</p> <p>17 Q. So the Schedule II has a 18 definition, does it not, under the United 19 States Code?</p> <p>20 A. It does.</p> <p>21 Q. There's three aspects to it. 22 Do you see those three aspects?</p> <p>23 A. I do.</p> <p>24 Q. Could you read aspect A?</p> <p>25 A. "The drug or other substance</p>

<p style="text-align: right;">Page 54</p> <p>1 the Congressional history of all those codes 2 that we just walked through. And I'm not 3 going to ask you to read the entire document 4 because I've highlighted certain sections for 5 you.</p> <p>6 The first thing I'd like you to 7 do is I'd like for you to turn to Bates stamp 8 page 5. And while you read the document to 9 yourself, I'm going to read it out loud to 10 save you some time.</p> <p>11 A. Okay.</p> <p>12 Q. Under Title 2, Control and 13 Enforcement, it states, "The bill provides 14 for control by the Justice Department of 15 problems related to drug abuse through 16 registration of manufacturers, wholesalers, 17 retailers and all others in the legitimate 18 distribution chain and makes transactions 19 outside the legitimate distribution chain 20 illegal."</p> <p>21 Does McKesson acknowledge this 22 finding from Congress?</p> <p>23 MS. HENN: Objection to form. 24 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 for a minute.</p> <p>2 McKesson understands that in 3 1970 Congress created a closed system, 4 agreed?</p> <p>5 A. Agree.</p> <p>6 Q. What a closed system means is 7 that laissez-faire economics don't apply, 8 agreed?</p> <p>9 MS. HENN: Objection to form. 10 THE WITNESS: Have to refresh 11 my memory on laissez-faire economics. QUESTIONS BY MR. FARRELL:</p> <p>13 Q. It's just a fancy French word 14 for "hands off." The government is 15 intervening in the marketplace of the chain 16 of distribution for opium pills, agreed?</p> <p>17 A. For controlled substances.</p> <p>18 Q. Well, for all controlled 19 substances --</p> <p>20 A. Correct.</p> <p>21 Q. -- but today we're talking 22 about opium pills.</p> <p>23 A. Understood.</p> <p>24 Q. So the controlled substances 25 are in a chain of distribution that are</p>
<p style="text-align: right;">Page 55</p> <p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. I'm going to have you to turn 3 to Bates stamp page 8. And again, these are 4 my highlights. Congress didn't highlight 5 this in 1970; Paul Junior did. So while you 6 read it, I'm going to read it out loud.</p> <p>7 "The bill was designed to 8 improve the administration and regulation of 9 the manufacturing, distribution and 10 dispensing of controlled substances by 11 providing for a closed system of drug 12 distribution for legitimate handlers of such 13 drugs. Such a closed system should 14 significantly reduce the widespread diversion 15 of these drugs out of the legitimate channels 16 into the illicit market, while at the same 17 time providing the legitimate drug industry 18 with a unified approach to narcotic and 19 dangerous drug control."</p> <p>20 Does McKesson acknowledge the 21 truth of this finding by Congress?</p> <p>22 MS. HENN: Objection to form. 23 THE WITNESS: Yes.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. So let's just talk about this</p>	<p style="text-align: right;">Page 57</p> <p>1 closed off to the rest of the marketplace.</p> <p>2 McKesson acknowledges that?</p> <p>3 MS. HENN: Objection to form. 4 THE WITNESS: Correct. It's a 5 closed system.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. And in order to participate in 8 the closed system, you have to be one of the 9 select few that gets a registration 10 certificate from the DEA, agreed?</p> <p>11 A. Agreed.</p> <p>12 Q. And the reason Congress did 13 this was to reduce diversion. Does McKesson 14 acknowledge that?</p> <p>15 MS. HENN: Objection to form. 16 THE WITNESS: Yes, I believe 17 that was the overall intent.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. So it's creating rules to 20 prevent diversion to the best of their 21 ability. McKesson acknowledges that fact?</p> <p>22 MS. HENN: Objection to form. 23 THE WITNESS: Yes.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. Because if McKesson doesn't</p>

Page 58	Page 60
<p>1 follow the law, then diversion is likely.</p> <p>2 You agree with that statement?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: I don't know if</p> <p>5 I'd say -- always characterize it as</p> <p>6 likely all the time, but diversion can</p> <p>7 happen.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. Okay. Well, in this specific</p> <p>10 provision, the United States Congress passed</p> <p>11 a law to close the system of distribution and</p> <p>12 enact laws to reduce the widespread diversion</p> <p>13 of these drugs. You agree with that? That's</p> <p>14 the purpose of this law?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. So the idea here is that -- to</p> <p>19 close the system of distribution so that we</p> <p>20 keep these dangerous opium pills inside the</p> <p>21 legitimate market for medical care, agreed?</p> <p>22 A. Agreed.</p> <p>23 Q. And that's why we have these</p> <p>24 laws enacted, so that we can do our best to</p> <p>25 keep these drugs to the patients that need</p>	<p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. Does McKesson acknowledge that</p> <p>3 sentence to be true?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. It just makes sense, right? If</p> <p>8 you're going to punish somebody and the</p> <p>9 punishment isn't very severe, they're likely</p> <p>10 to what?</p> <p>11 MS. HENN: Objection to form.</p> <p>12 THE WITNESS: To do it again.</p> <p>13 QUESTIONS BY MR. FARRELL:</p> <p>14 Q. Why?</p> <p>15 A. There's no penalty or</p> <p>16 accountability.</p> <p>17 Q. And so by making the penalty</p> <p>18 prohibitive, what does it do?</p> <p>19 MS. HENN: Objection to form.</p> <p>20 THE WITNESS: Could you ask the</p> <p>21 question in a -- again? What --</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. If you make the penalty</p> <p>24 prohibitive, then what happens?</p> <p>25 MS. HENN: Objection to form.</p>
<p>1 them, agreed?</p> <p>2 A. Agreed.</p> <p>3 Q. And if you don't follow those</p> <p>4 laws, then what happens is we have diversion</p> <p>5 into the illicit market?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 THE WITNESS: That can happen</p> <p>8 if you don't follow those laws.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. And that's the reason Congress</p> <p>11 created the laws as stated in this finding?</p> <p>12 MS. HENN: Objection to form.</p> <p>13 THE WITNESS: Correct.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. Next I'm going to have you flip</p> <p>16 to page 11. And I just highlighted one</p> <p>17 sentence in here. And it says, "The price</p> <p>18 for participation in this traffic," which is</p> <p>19 illicit drug trafficking, "should be</p> <p>20 prohibitive."</p> <p>21 Do you see that sentence?</p> <p>22 A. I see that.</p> <p>23 Q. Does McKesson acknowledge that?</p> <p>24 MS. HENN: Objection to form.</p> <p>25</p>	<p>1 Page 59</p> <p>1 MR. MONTMINY: Objection to</p> <p>2 form. Calls for speculation. This is</p> <p>3 Brandon Montminy for Henry Schein.</p> <p>4 MS. HENN: And just to note for</p> <p>5 everyone's knowledge, many of you know</p> <p>6 this, but in the deposition protocol,</p> <p>7 one defendant's objection counts for</p> <p>8 all defendants, so there's no need to</p> <p>9 do depositions {sic} if I'm done them.</p> <p>10 But if on the phone you can't hear me,</p> <p>11 I can try to speak up.</p> <p>12 MR. FARRELL: So that means</p> <p>13 you're not allowed to object to this</p> <p>14 question because Henry Schein objected</p> <p>15 to it.</p> <p>16 MS. HENN: I already did, I'm</p> <p>17 afraid to say. There are two.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. So back to my original</p> <p>20 question.</p> <p>21 A. Yeah, could you put it in</p> <p>22 simpler terms in --</p> <p>23 Q. Yeah. Let me put it --</p> <p>24 A. Just so I know.</p> <p>25 Q. -- in other terms.</p>

<p style="text-align: right;">Page 62</p> <p>1 A. Yeah.</p> <p>2 Q. Let's say that a speeding</p> <p>3 ticket is a dollar. What would happen across</p> <p>4 America if a speeding ticket was a dollar?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. What would happen?</p> <p>8 A. It wouldn't hold the same</p> <p>9 weight or it wouldn't -- it may not deter</p> <p>10 people from speeding.</p> <p>11 Q. What if the speeding ticket was</p> <p>12 a million dollars? What would that do?</p> <p>13 MS. HENN: Objection to form.</p> <p>14 THE WITNESS: I'm just</p> <p>15 guessing, but likely people would not</p> <p>16 speed.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. Because the penalty would be</p> <p>19 prohibitive, agreed?</p> <p>20 A. Agreed.</p> <p>21 Q. Like not to be cute, but</p> <p>22 McKesson was fined \$13 million in 2008 and</p> <p>23 then was fined again in 2017 \$150 million.</p> <p>24 Do you think that the second</p> <p>25 fine was intended to be more prohibitive than</p>	<p style="text-align: right;">Page 64</p> <p>1 from legitimate channels into illegitimate</p> <p>2 channels.</p> <p>3 Does McKesson acknowledge that?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. Flip to page 27, the very next</p> <p>8 page.</p> <p>9 It says, "The legislation</p> <p>10 provides that all persons engaged in a</p> <p>11 legitimate distribution chain involving drugs</p> <p>12 included in one of the schedules under the</p> <p>13 bill must be registered with the Attorney</p> <p>14 General."</p> <p>15 So again, this is bringing full</p> <p>16 circle the authority of the Attorney General</p> <p>17 and the Department of Justice to promulgate</p> <p>18 rules for those that wish to engage in the</p> <p>19 closed system of distribution for controlled</p> <p>20 substances, and McKesson acknowledges that?</p> <p>21 MS. HENN: Objection to form.</p> <p>22 THE WITNESS: Yes.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Now flip to page 34. And I</p> <p>25 would like for you to please read that</p>
<p style="text-align: right;">Page 63</p> <p>1 the first fine?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 THE WITNESS: I believe so.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. All right. Now, let's go to</p> <p>6 Bates stamp page 26.</p> <p>7 And it says, "Titles 2 and 3 of</p> <p>8 the bill deal with law enforcement aspect of</p> <p>9 drug abuse and provide authority for the</p> <p>10 Department of Justice to keep track of all</p> <p>11 drugs subject to abuse, manufactured or</p> <p>12 distributed in the United States, in order to</p> <p>13 prevent diversion of these drugs from</p> <p>14 legitimate channels of commerce."</p> <p>15 Does McKesson acknowledge the</p> <p>16 truth of that statement?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 THE WITNESS: Yes.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. This is just another reflection</p> <p>21 of the US Code that we were reading that</p> <p>22 Congress is giving the authority to the</p> <p>23 Department of Justice to enact safety rules</p> <p>24 in order to prevent the diversion of</p> <p>25 controlled substances, including opium pills,</p>	<p style="text-align: right;">Page 65</p> <p>1 provision that's highlighted aloud.</p> <p>2 A. One second.</p> <p>3 "The illegal importation,</p> <p>4 manufacture, distribution and possession and</p> <p>5 improper use of controlled substances have a</p> <p>6 substantial detrimental effect on the</p> <p>7 public's health and general welfare."</p> <p>8 Q. Does McKesson acknowledge the</p> <p>9 truth of that statement?</p> <p>10 A. Yes.</p> <p>11 Q. So if somebody in the chain of</p> <p>12 distribution breaks the law, it has a</p> <p>13 substantial detrimental effect on the public</p> <p>14 health and general welfare, agreed?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 THE WITNESS: It can.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. Now go to page 44.</p> <p>19 Again, this is another</p> <p>20 reiteration that Congress authorizes the</p> <p>21 Attorney General to "promulgate rules and</p> <p>22 regulations and to charge reasonable fees</p> <p>23 relating to the registration and control of</p> <p>24 the manufacture, distribution and dispensing</p> <p>25 of substances covered by the Act."</p>

<p style="text-align: right;">Page 66</p> <p>1 Does McKesson acknowledge the 2 authority of the Department of Justice and 3 the Attorney General to do so?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. Now flip to page 45, the very 8 next one. This is a little bit longer, so 9 I'm going to give you a chance to read it 10 real quick.</p> <p>11 A. Okay. I've read it.</p> <p>12 Q. So I'm going to read it aloud, 13 and I'm going to stop and ask you some 14 questions.</p> <p>15 It's -- Section B of 16 Section 303 states that the Attorney General, 17 when issuing registrations, is going to 18 consider several factors, agreed?</p> <p>19 A. Can you say that again? I was 20 looking at --</p> <p>21 Q. Yeah, I was trying to summarize 22 the first four lines.</p> <p>23 A. Yeah.</p> <p>24 Q. Basically, what it really boils 25 down to is this is a reiteration of the</p>	<p style="text-align: right;">Page 68</p> <p>1 authority to promulgate rules which govern 2 McKesson so that they maintain effective 3 controls against diversion, and to adopt any 4 other rule they want that may be relevant and 5 consistent with public health and safety?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 THE WITNESS: Agree.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. I just want to make sure that 10 we start off with the premise that the rules 11 we're about to go through aren't designed 12 to -- let me ask it in a better way.</p> <p>13 The rules that we're about to 14 get into, McKesson acknowledges, are designed 15 with the primary purpose of preventing 16 diversion?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 THE WITNESS: Correct.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. Because diversion impacts 21 public health and safety, and McKesson 22 acknowledges that?</p> <p>23 A. Yes.</p> <p>24 MS. HENN: Objection to form. (McKesson-Hartle Exhibit 7)</p>
<p style="text-align: right;">Page 67</p> <p>1 findings behind the statute that I showed you 2 regarding maintaining effective control.</p> <p>3 So if you drop down to where it 4 says number 1 at the bottom of the page -- 5 can you start reading there?</p> <p>6 A. Yeah. Okay.</p> <p>7 Q. Will you read that aloud, 8 please, starting with "maintenance of 9 effective controls"?</p> <p>10 A. "Maintenance of effective 11 controls against diversion of particular 12 controlled substances into other than 13 legitimate medical, scientific and industrial 14 channels."</p> <p>15 Q. All right. So again, what 16 we're talking about is the enactment of rules 17 to prevent diversion?</p> <p>18 A. Correct.</p> <p>19 Q. Last factor, factor 5, would 20 you read that?</p> <p>21 A. "Such other factors as may be 22 relevant to and consistent with the public 23 health and safety."</p> <p>24 Q. Does McKesson acknowledge that 25 Congress gave the Department of Justice the</p>	<p style="text-align: right;">Page 69</p> <p>1 marked for identification.)</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. The next exhibit we'll have is 4 marked as Exhibit 7, and correspondingly in 5 the top right-hand corner it's MCK 6 30(b)(6)_07-01, and it's just one page.</p> <p>7 Once we get through this 8 section, we can take a break if you like.</p> <p>9 All right. So what I'm going 10 to represent to you is that you will not find 11 this anywhere on the Internet either because 12 I made it. In the top left-hand corner is 13 the Department of Justice seal, and in the 14 top right-hand corner is the Drug Enforcement 15 Administration seal, and in the middle is 16 where you can trace down the rules that 17 govern McKesson.</p> <p>18 Does McKesson acknowledge that 19 Title 21 CFR 1301.74 governs its conduct with 20 the distribution of controlled substances, 21 including opium pills?</p> <p>22 MS. HENN: Objection to form.</p> <p>23 THE WITNESS: Yes.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. Part B is what we're going to</p>

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<p>1 spend the rest of the day on. 2 Have you read part B before? 3 A. Yes. 4 Q. Does McKesson acknowledge that 5 part B governs its conduct? 6 MS. HENN: Objection to form. 7 THE WITNESS: Yes. 8 QUESTIONS BY MR. FARRELL: 9 Q. Does McKesson acknowledge that 10 for it to be lawfully carrying out its job of 11 dispensing controlled substances and opium 12 pills, it must follow paragraph B? 13 MS. HENN: Objection to form. 14 THE WITNESS: Yes. 15 QUESTIONS BY MR. FARRELL: 16 Q. And if McKesson does not follow 17 paragraph B, its conduct is illegal? 18 MS. HENN: Objection to form. 19 THE WITNESS: Yes. 20 QUESTIONS BY MR. FARRELL: 21 Q. To make it clear -- 22 A. Yeah. 23 Q. -- if McKesson follows 24 paragraph B, its conduct is legal? 25 A. Correct.</p>	<p>1 QUESTIONS BY MR. FARRELL: 2 Q. Yeah, it got very complicated 3 because it was a compound question with 4 compound objections. 5 Does McKesson acknowledge that 6 paragraph B that we're looking at here is 7 intended to prevent diversion? 8 MS. HENN: Objection to form. 9 THE WITNESS: Yes. 10 QUESTIONS BY MR. FARRELL: 11 Q. And that if you follow -- if 12 McKesson abides by paragraph B, its conduct 13 is legal and diversion is prevented? 14 MS. HENN: Objection to form. 15 THE WITNESS: Agreed. 16 QUESTIONS BY MR. FARRELL: 17 Q. And if McKesson does not abide 18 by paragraph B, its conduct is illegal and 19 the result could be diversion? 20 MS. HENN: Objection to form. 21 THE WITNESS: Agree. The 22 result could be diversion. 23 QUESTIONS BY MR. FARRELL: 24 Q. Well, if McKesson is 25 distributing orders of unusual size, could it</p>
Page 71	Page 73
<p>1 Q. And if McKesson does not follow 2 paragraph B, its conduct is illegal? 3 MS. HENN: Objection to form. 4 THE WITNESS: Correct. 5 QUESTIONS BY MR. FARRELL: 6 Q. And so bringing full circle, we 7 understand that the purpose of this 8 regulation, one of them, is the prevention of 9 diversion, correct? 10 MS. HENN: Objection to form. 11 THE WITNESS: Correct. 12 QUESTIONS BY MR. FARRELL: 13 Q. So if you engage in illegal 14 conduct and violate paragraph B, the result 15 of that is diversion? 16 MS. HENN: Objection to form. 17 QUESTIONS BY MR. FARRELL: 18 Q. It's the whole reason this law 19 was enacted? 20 MS. HENN: Objection to form. 21 QUESTIONS BY MR. FARRELL: 22 Q. Does McKesson acknowledge that? 23 A. Could you ask the specific 24 question again? 25 MS. HENN: Objection to form.</p>	<p>1 be anything other than diversion? 2 MS. HENN: Objection to form. 3 THE WITNESS: It could. 4 QUESTIONS BY MR. FARRELL: 5 Q. All right. Give me some 6 examples. 7 MS. HENN: Objection to form. 8 THE WITNESS: Maybe the best -- 9 a customer adds, you know -- their 10 business model changes or they add -- 11 for example, a pharmacy may add 12 contracts with multiple long-term care 13 facilities and require that they now 14 dispense more for legitimate reasons, 15 so they could order more in that 16 context. 17 QUESTIONS BY MR. FARRELL: 18 Q. So what's the purpose of the 19 Department of Justice making McKesson follow 20 paragraph B? 21 MS. HENN: Objection to form. 22 THE WITNESS: Say that again? 23 What's the purpose of why we 24 follow that? To try to prevent diversion.</p>

<p>1 to mark it as Exhibit 9.</p> <p>2 A. So your question again?</p> <p>3 Q. Yeah.</p> <p>4 Does McKesson acknowledge that</p> <p>5 the CFR provision cited in Masters</p> <p>6 Pharmaceutical case, which is 21 CFR</p> <p>7 1301.74 B, is and always has been the law</p> <p>8 governing McKesson's conduct since 1971?</p> <p>9 MS. HENN: Objection to form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 MR. FARRELL: And</p> <p>12 unfortunately, I'm not going to be</p> <p>13 able to get all of my pretty-colored</p> <p>14 books on the videotape.</p> <p>15 Let the record reflect that the</p> <p>16 office of the Federal Register has a</p> <p>17 kaleidoscope of colors that it uses</p> <p>18 for the front cover of all of its CFR</p> <p>19 booklets.</p> <p>20 And with that, we'll take our</p> <p>21 first break.</p> <p>22 VIDEOGRAPHER: The time is</p> <p>23 10:23 a.m. We're going off the</p> <p>24 record.</p> <p>25 (Off the record at 10:23 a.m.)</p>	<p>Page 78</p> <p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. Did you talk to your lawyer</p> <p>3 about the substance of your testimony during</p> <p>4 the break?</p> <p>5 MS. HENN: And I'll instruct</p> <p>6 the witness not to divulge particulars</p> <p>7 of what we talked about.</p> <p>8 But you may answer that</p> <p>9 question yes or no.</p> <p>10 THE WITNESS: Yes.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Okay. What did you talk about?</p> <p>13 MS. HENN: I'm going to</p> <p>14 instruct the witness not to answer</p> <p>15 that question as calling for</p> <p>16 privileged information.</p> <p>17 MR. FARRELL: Right. But the</p> <p>18 deposition protocol and the rules</p> <p>19 governing this litigation state that</p> <p>20 counsel is not allowed to discuss with</p> <p>21 the witness the substance of any</p> <p>22 testimony during a break.</p> <p>23 And so his answer in the</p> <p>24 affirmative indicates that that</p> <p>25 occurred, and so I should be allowed</p>
<p>1 VIDEOGRAPHER: The time is</p> <p>2 10:40 a.m., and we're back on the</p> <p>3 record.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. I forgot to warn you before the</p> <p>6 break, but during the break, did you have any</p> <p>7 meaningful conversations with your counsel</p> <p>8 about your testimony?</p> <p>9 MS. HENN: Objection to form.</p> <p>10 THE WITNESS: No.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Did you talk about your</p> <p>13 testimony at all?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 THE WITNESS: Not really my</p> <p>16 testimony, just --</p> <p>17 MS. HENN: And I'm just going</p> <p>18 to instruct the witness not to divulge</p> <p>19 what we talked about. I don't think</p> <p>20 that's an appropriate question. I</p> <p>21 think you got the answer you were</p> <p>22 looking for.</p> <p>23 MR. FARRELL: I think I almost</p> <p>24 got the answer I'm looking for.</p>	<p>Page 79</p> <p>1 to inquire about that.</p> <p>2 MS. HENN: All right. Well,</p> <p>3 let's take a break, and we will</p> <p>4 discuss outside and have a privileged</p> <p>5 conversation, and we'll see if there's</p> <p>6 any answer that he can provide without</p> <p>7 divulging privileged information that</p> <p>8 I don't believe you're entitled to.</p> <p>9 MR. FARRELL: Okay. So you're</p> <p>10 going to have a second conversation</p> <p>11 during a break about the substance of</p> <p>12 his testimony?</p> <p>13 MS. HENN: No, Counsel, that's</p> <p>14 not what's going to happen. But I'd</p> <p>15 like to take a break so that I can</p> <p>16 talk to my witness about answering the</p> <p>17 question inquiring into discussions</p> <p>18 with counsel.</p> <p>19 MR. FARRELL: Okay.</p> <p>20 MS. HENN: Thank you.</p> <p>21 VIDEOGRAPHER: The time is</p> <p>22 10:42 a.m. We're going off the</p> <p>23 record.</p> <p>24 (Off the record at 10:42 a.m.)</p> <p>25 VIDEOGRAPHER: The time is</p>

<p style="text-align: right;">Page 82</p> <p>1 10:46 a.m. We're back on the record. 2 MR. FARRELL: So what did you 3 find out? 4 MS. HENN: Counsel, just to 5 protect the privilege, I'm just going 6 to instruct the witness that when he 7 answered yes to your question and 8 indicated affirmatively that we'd 9 talked about the substance of his 10 testimony, I'm going to ask him to 11 answer your question and tell you what 12 he deemed to be the substance of his 13 testimony, but I'm also going to ask 14 him not to repeat what I -- my 15 response. 16 So let's do that, and we can 17 discuss if you're still concerned. 18 Okay? 19 MR. FARRELL: Not really. Let 20 me make -- 21 MS. HENN: Go ahead and ask 22 your question. 23 MR. FARRELL: Let me make it 24 even easier. 25</p>	<p style="text-align: right;">Page 84</p> <p>1 THE WITNESS: Yes, a general 2 duty as part of our responsibility, 3 regulatory responsibilities and 4 general responsibilities. 5 QUESTIONS BY MR. FARRELL: 6 Q. So let's be careful. I want 7 to -- the wording sometimes makes a 8 difference. 9 A. Okay. 10 Q. Aside from the statute from the 11 United States Code and the regulations 12 promulgated by the Department of Justice, 13 does McKesson acknowledge that it owes a duty 14 to the general public to prevent diversion of 15 controlled substances and opium pills into 16 the illicit market? 17 MS. HENN: Objection to form. 18 THE WITNESS: We do feel 19 strongly about playing a role in 20 preventing diversion. 21 QUESTIONS BY MR. FARRELL: 22 Q. So the answer needs to be 23 "yes," "no," or "I don't know." 24 A. Yes. 25 MS. HENN: Objection to form.</p>
<p style="text-align: right;">Page 83</p> <p>1 QUESTIONS BY MR. FARRELL: 2 Q. Did anything your lawyer say to 3 you cause you to change or withdraw anything 4 you said this morning? 5 A. Absolutely not. 6 Q. Did anything your lawyer told 7 you during the break impact or affect your 8 testimony the rest of the day? 9 A. No. 10 Q. That's fair enough. 11 A. Okay. 12 Q. Aside from the statutory duty 13 and the duty that's in the regulation, does 14 McKesson acknowledge that it has a general 15 duty to protect the public against diversion 16 of controlled substances and opium pills? 17 MS. HENN: Objection to form. 18 THE WITNESS: Could you restate 19 that, please? 20 QUESTIONS BY MR. FARRELL: 21 Q. Does McKesson acknowledge that 22 it has a general duty to protect the public 23 against diversion of controlled substances 24 and opium pills into the illicit market? 25 MS. HENN: Objection to form.</p>	<p style="text-align: right;">Page 85</p> <p>1 QUESTIONS BY MR. FARRELL: 2 Q. So your answer is, yes, aside 3 from the statutory and regulatory provisions, 4 McKesson acknowledges that it owes a duty to 5 the general public to prevent diversion of 6 controlled substances and opium pills into 7 the illicit market? 8 MS. HENN: Objection to form. 9 THE WITNESS: Yes. 10 (McKesson-Hartle Exhibit 10 11 marked for identification.) 12 QUESTIONS BY MR. FARRELL: 13 Q. I'm going to mark what is going 14 to be Deposition Exhibit 10. The top 15 right-hand corner is going to be 1910_01_11. 16 And I'll show it to you, to counsel, two 17 extra copies for my new best friends. And 18 I'm going to give you a little introduction 19 to this document before you start flipping 20 through it. 21 The front is the HathiTrust. 22 Are you familiar with the HathiTrust? 23 A. I am not. 24 Q. I wasn't either until this 25 litigation.</p>

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<p>1 The HathiTrust is an 2 organization, nonprofit organization, that 3 collects public documents and puts them 4 online.</p> <p>5 A. Okay.</p> <p>6 Q. This one is from December 1910 7 and January 1911. That's a long time ago, 8 isn't it?</p> <p>9 A. That would be a long time ago.</p> <p>10 Q. 100 years ago.</p> <p>11 This predates 1970s US Code and 12 the 1971 Code of Federal Regulations, agreed?</p> <p>13 A. Clearly, yes.</p> <p>14 Q. This is a hearing on -- take a 15 guess.</p> <p>16 A. Opioids.</p> <p>17 Q. In particular, opium. And it 18 was about the importation of opium into 19 America back in the early turn of the 20 century.</p> <p>21 McKesson was around back then, 22 wasn't they?</p> <p>23 A. McKesson was -- has been 24 around.</p> <p>25 Q. They were around back during</p>	<p>1 United States Constitution, I'm just going to 2 give you a broad statement.</p> <p>3 What this is, is this is</p> <p>4 America's first attempt to regulate opium 5 trafficking in America. And back then there 6 was a big debate on whether or not this was 7 something the federal government can do or 8 it's something that should be left to the 9 states.</p> <p>10 So what the federal government 11 decided to do was pass the Harrison Narcotic 12 Act. What that did was it basically taxed 13 opium as a way for the federal government to 14 control, and this is a debate about the 15 taxation on the importation of opium.</p> <p>16 A. Okay.</p> <p>17 Q. Page 72 is the beginning of the 18 testimony of Mr. McKesson from McKesson & 19 Robbins, which is the predecessor and when 20 McKesson Corporation was in the private hands 21 of the McKesson family.</p> <p>22 You acknowledge that?</p> <p>23 A. Correct.</p> <p>24 Q. I'm going to have you flip to 25 page 75. And if you look near the top, one</p>
<p>1 this time frame, agreed?</p> <p>2 A. Agreed.</p> <p>3 Q. So why do you think I'm 4 bringing this up?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 THE WITNESS: I don't want to 7 speculate why I think you're bringing 8 it up.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Guess who testified during this 11 hearing.</p> <p>12 MS. HENN: Objection to form.</p> <p>13 THE WITNESS: Don't know.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. Take a wild guess.</p> <p>16 MS. HENN: Same objection.</p> <p>17 THE WITNESS: I don't have 18 honestly a guess.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. Mr. McKesson.</p> <p>21 So what I'm going to have you 22 flip to, is I'm going to have you flip to 23 page 72.</p> <p>24 Now, without going through the 25 entire boring history of commerce clause, the</p>	<p>1 of congressmen asks Mr. McKesson about 2 whether or not he supports this bill. And 3 I'm going to give you an opportunity to read 4 to yourself the provision before I ask you to 5 read it aloud.</p> <p>6 A. Which specific part do you want 7 me to start and end at?</p> <p>8 Q. The first time it says 9 "Mr. McKesson."</p> <p>10 A. Okay.</p> <p>11 Q. He's asked about whether or not 12 he's in favor of the bill.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. And his answer is, "Yes, very 16 much in favor of the bill."</p> <p>17 Do you see that provision?</p> <p>18 A. I do.</p> <p>19 Q. Now, would you please begin 20 reading the next sentence?</p> <p>21 A. Out loud?</p> <p>22 Q. Please.</p> <p>23 A. "Our firm was founded in 1832, 24 and we have been ever since against the sale 25 of habit-forming drugs and all that kind of</p>

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<p>1 thing. Orders which have come to us from 2 suspicious people we have put in the hands of 3 the proper authorities for tracing and 4 prosecution, if necessary."</p> <p>5 Q. So you agree with me that even 6 before the enactment of the Controlled 7 Substances Act and the Code of Federal 8 Regulations, which we discussed earlier this 9 morning, is that McKesson, Mr. McKesson 10 himself, was acknowledging that if they have 11 suspicious people, they're going to turn it 12 over to law enforcement for prosecution, 13 agreed?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 THE WITNESS: Agreed based on 16 what I'm reading in this document.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. And this duty predates the US 19 Code and predates the Code of Federal 20 Regulations, agreed?</p> <p>21 MS. HENN: Objection to form.</p> <p>22 THE WITNESS: Agreed.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. So would you agree, would 25 McKesson agree, that it owes a common law</p>	<p>1 Q. When did McKesson begin the 2 business of selling opium pills?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: I do not know.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. At some point in time 7 McKesson's philosophy changed, and it went 8 from not selling habit-forming drugs to now 9 selling habit-forming drugs, agreed?</p> <p>10 MS. HENN: Objection to form.</p> <p>11 THE WITNESS: Agreed.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. Has McKesson considered, given 14 the presence of the opioid epidemic in 15 America, perhaps returning to the stance of 16 1910 of its founder, Mr. McKesson?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 THE WITNESS: Again, I'm not 19 aware of that. Can't answer that 20 question.</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. Well, you could choose not to 23 sell opium pills anymore in America, could 24 you not?</p> <p>25 A. You could choose to.</p>
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<p>1 duty to the American public to prevent 2 diversion if it's engaged in the distribution 3 of controlled substances, including opium 4 pills, to prevent their diversion into the 5 illicit market?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 THE WITNESS: Can you ask it in 8 a shorter version there?</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Probably not.</p> <p>11 Does McKesson acknowledge it 12 owes a common law duty to the American public 13 to prevent the diversion of controlled 14 substances, including opium pills, into the 15 illicit market?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Now, the first part of the 20 sentence, it kind of grabbed my attention. 21 It says, "McKesson has ever since been 22 against the sale of habit-forming drugs." 23 And this was in 1910.</p> <p>24 Do you see that?</p> <p>25 A. I see that.</p>	<p>1 Q. But McKesson chooses to 2 continue to sell opium pills in America, 3 despite the fact that we have an opiate pill 4 epidemic?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 THE WITNESS: We do. (McKesson-Hartle Exhibit 11 marked for identification.)</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. The next exhibit we're going to 9 have marked as Exhibit 11. In the top 10 right-hand corner, this is 1996, 04, 01. 11 We've acknowledged that in 12 1971, Department of Justice adopted CFR 13 provision 1301.74, agreed?</p> <p>14 A. Agree.</p> <p>15 Q. And then we went through and 16 it's the law today, agreed?</p> <p>17 A. Agreed.</p> <p>18 Q. It's the law that was 19 referenced in the Masters Pharmaceutical 20 case, agreed?</p> <p>21 A. Agreed.</p> <p>22 Q. And it hadn't changed through 23 all those colorful books I showed you,</p>

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1 want them? 2 QUESTIONS BY MR. FARRELL: 3 Q. Correct. 4 A. Aware of informal discussions 5 and communications but maybe not formal. 6 Q. So Mr. Boggs, Gary Boggs, 7 testified a couple weeks ago in this case as 8 the 30(b)(6) designee for communications with 9 the DEA. He testified he was not aware of 10 any such thing. 11 I'm asking you today, as the 12 McKesson designee for the suspicious order 13 monitoring program, whether or not you're 14 aware under Section 55 if McKesson received 15 in writing any notice from the DEA telling 16 them they don't want the reports. 17 MS. HENN: Objection to form. 18 Outside the scope. 19 THE WITNESS: I'm not aware. 20 QUESTIONS BY MR. FARRELL: 21 Q. Why would you have in your 22 policy the insistence that such a directive 23 be in writing? 24 MS. HENN: Objection to form. 25 Outside the scope.	1 THE WITNESS: The actual 2 suspicious order report or a 3 verification that they received -- 4 QUESTIONS BY MR. FARRELL: 5 Q. Verification. 6 A. A verification that DEA -- that 7 we -- I have not seen those reports of 8 verifications. 9 Q. Now, at the very bottom of the 10 page, page 4, do you see what it -- it says 11 "Continued Reporting Responsibility"? 12 A. I do. 13 Q. Will you read that aloud, first 14 sentence? 15 A. The first -- okay. 16 "Forwarding these reports to 17 DEA does not relieve the distribution center 18 of responsibility to review the reports and 19 note order quantities of unusual size." 20 Q. So you acknowledge, sitting 21 here today as McKesson, that simply 22 submitting reports to the DEA does not comply 23 with the US Code or the Code of Federal 24 Regulations? 25 MS. HENN: Objection to form.
1 THE WITNESS: Could you ask the 2 question a different way? 3 Why would we request that it be 4 in writing? 5 QUESTIONS BY MR. FARRELL: 6 Q. Yes. 7 A. To formalize things, 8 documentation. 9 Q. Under paragraph F it says, "The 10 monthly controlled substance suspicious 11 purchase reports and the monthly ARCos 12 customer recap variance must be sent 13 certified mail, return receipt requested." 14 Do you see that? 15 A. I see that. 16 Q. Why would McKesson, in its 17 Section 55 policy, want confirmation that it 18 was sending reports to the DEA? 19 MS. HENN: Objection to form. 20 Outside the scope. 21 THE WITNESS: To verify that 22 they received them. 23 QUESTIONS BY MR. FARRELL: 24 Q. Have you seen such reports? 25 MS. HENN: Objection to form.	1 Outside the scope. 2 THE WITNESS: Agree. 3 QUESTIONS BY MR. FARRELL: 4 Q. You have a duty to review and 5 note orders of unusual size? 6 A. It's part of our -- this 7 document program, yes. 8 Q. Page 33. It's talking about 9 controlled substances, and it says under 10 paragraph 5, "Controlled substances and 11 List I product order fillers must be aware of 12 our responsibilities. They are expected to 13 report to management any unusual purchase 14 request before orders are filled." 15 Do you see that? 16 A. I do see that. 17 Q. So again, it was the policy of 18 McKesson as of July of 2000 that they were 19 still going to ship suspicious orders as long 20 as they got reported? 21 MS. HENN: Objection to form. 22 Outside the scope. 23 THE WITNESS: Can you rephrase 24 that for me, please?
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<p>1 Q. It's a Congressional record 2 from 2001.</p> <p>3 Can you read the title of the 4 Congressional investigation?</p> <p>5 A. "OxyContin: Its use and abuse: 6 Hearing before the Subcommittee and Oversight 7 and Investigations of the Committee on Energy 8 and Commerce, House of Representatives, 107th 9 Congress, First Session, August 28th of 10 2001."</p> <p>11 Q. Does McKesson acknowledge that 12 the use and abuse of OxyContin was on the 13 national radar at least as early as 14 August 28, 2001, with a Congressional 15 hearing?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. I'm going to have you flip to 20 page 8. This is the introductory statement 21 from the chairman, James Greenwood, on the 22 Subcommittee on Oversight and Investigations. 23 He's from Pennsylvania.</p> <p>24 Two-thirds of the way down, the 25 sentence says, "These actions, though</p>	<p>1 2001, the number of prescriptions went from 2 300,000 to almost 6 million. So the 3 OxyContin business was a-booming, wasn't it? 4 MS. HENN: Objection to form. 5 Outside the scope.</p> <p>6 THE WITNESS: It increased 7 significantly.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. And McKesson was amongst the 10 distributors that were delivering the pills 11 from Purdue Pharma to the pharmacies?</p> <p>12 MS. HENN: Objection to form.</p> <p>13 THE WITNESS: We were.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. Do you believe that the 16 increase from 300,000 prescriptions to 6 17 million is an increase of unusual size?</p> <p>18 MS. HENN: Objection to form.</p> <p>19 Outside the scope.</p> <p>20 THE WITNESS: Could you ask 21 that again?</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. You go from 300,000 24 prescriptions to 6 million in five years. Do 25 you think that that is an unusual increase?</p>
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<p>1 commendable, also appear long overdue." 2 Do you see that sentence?</p> <p>3 A. I do see that.</p> <p>4 Q. Will you begin reading, 5 starting with "according"?</p> <p>6 A. "According to DEA, the number 7 of oxycodone-related deaths has increased 8 400 percent since 1996, the same time period 9 in which the annual number of prescriptions 10 for OxyContin has risen from approximately 11 300,000 to almost 6 million."</p> <p>12 Q. And how did these 13 prescriptions -- how did these pills get from 14 Purdue Pharma, who makes OxyContin, to the 15 pharmacies?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 THE WITNESS: After being 18 prescribed by a doctor --</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. Yes.</p> <p>21 A. -- and sent to pharmacies --</p> <p>22 Q. Yes.</p> <p>23 A. -- or other by distributors.</p> <p>24 Q. Right.</p> <p>25 So between 1996 and the year</p>	<p>1 MS. HENN: Objection to form. 2 Outside the scope.</p> <p>3 THE WITNESS: It appears to be 4 a significant increase. I don't -- I 5 don't have the context of before -- 6 everything before, but it's a large 7 increase.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. Well, assuming in 1996 there 10 were 300,000 prescriptions and five years 11 later there were 6 million, would you -- 12 would you characterize that increase as 13 unusual?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 Outside the scope.</p> <p>16 THE WITNESS: I don't know if I 17 would characterize it as -- it's 18 significant.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. Significant enough to get 21 McKesson's attention?</p> <p>22 MS. HENN: Objection to form.</p> <p>23 THE WITNESS: Significant 24 enough.</p>

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<p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. Yes?</p> <p>3 A. Yes.</p> <p>4 Q. Now, two paragraphs down it</p> <p>5 says, "In its testimony today" --</p> <p>6 Do you see that paragraph?</p> <p>7 A. I do.</p> <p>8 Q. -- "Purdue Pharma will argue</p> <p>9 that the death figures heralded by newspapers</p> <p>10 nationwide are inaccurate and are the prime</p> <p>11 mover of the negative hype surrounding</p> <p>12 OxyContin."</p> <p>13 Do you see that sentence?</p> <p>14 A. I do see that sentence.</p> <p>15 Q. So does McKesson acknowledge</p> <p>16 that death figures are being heralded by</p> <p>17 newspapers nationwide as of 2001?</p> <p>18 MS. HENN: Objection to form.</p> <p>19 Outside the scope.</p> <p>20 THE WITNESS: Could you ask</p> <p>21 that again in a different way, maybe?</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. Yeah.</p> <p>24 This is saying that there's</p> <p>25 newspaper headlines across the country of</p>	<p>1 MS. HENN: Same objections.</p> <p>2 THE WITNESS: I haven't seen</p> <p>3 any of those headlines, so I can't</p> <p>4 speak to whether us as a distributor</p> <p>5 was called out in those.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. I'm not asking you if you were</p> <p>8 called out as a distributor. What I'm asking</p> <p>9 you is if McKesson acknowledged that the</p> <p>10 pills that it was selling was causing deaths</p> <p>11 nationwide and resulted in newspaper</p> <p>12 headlines across the country.</p> <p>13 MS. HENN: Objection to form.</p> <p>14 Outside the scope.</p> <p>15 THE WITNESS: Yes, pills that</p> <p>16 we distribute were in headlines.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. And Purdue Pharma says that</p> <p>19 "those headlines are inaccurate and the prime</p> <p>20 mover of the negative hype surrounding</p> <p>21 OxyContin."</p> <p>22 Does McKesson Corporation,</p> <p>23 sitting here today, concur with Purdue</p> <p>24 Pharma?</p> <p>25 MS. HENN: Objection to form.</p>
<p>1 people dying taking opium pills that McKesson</p> <p>2 is distributing.</p> <p>3 Does McKesson acknowledge that?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 Outside the scope.</p> <p>6 THE WITNESS: Not that --</p> <p>7 there's certainly headlines of</p> <p>8 opioid-related deaths.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. In 2001?</p> <p>11 A. I don't know of any</p> <p>12 specifically. I'm assuming there were in</p> <p>13 that time frame.</p> <p>14 Q. And it's a little unfair to ask</p> <p>15 you because you weren't there in 2001, but as</p> <p>16 McKesson's corporate designee I'm simply</p> <p>17 looking for an acknowledgement that the chain</p> <p>18 of distribution McKesson was involved in is</p> <p>19 being heralded in newspapers as causing</p> <p>20 deaths across the country.</p> <p>21 MS. HENN: Objection to form.</p> <p>22 Outside the scope.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Does McKesson acknowledge that</p> <p>25 fact?</p>	<p>1 Outside the scope.</p> <p>2 THE WITNESS: Reading the rest</p> <p>3 of this if you don't -- I'm reading</p> <p>4 down a little bit more, so...</p> <p>5 Can you ask your question</p> <p>6 again?</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. Yeah.</p> <p>9 Does McKesson Corporation,</p> <p>10 sitting here today and testifying, concur</p> <p>11 with Purdue Pharma that the nationwide</p> <p>12 newspapers about overdose deaths are</p> <p>13 inaccurate?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 Outside the scope.</p> <p>16 THE WITNESS: I can't speak to</p> <p>17 that. I'd just be speculating.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. You don't share Purdue Pharma's</p> <p>20 disavow of the problems caused by its</p> <p>21 OxyContin pills?</p> <p>22 MS. HENN: Objection to form.</p> <p>23 Outside the scope.</p> <p>24 THE WITNESS: I'm not saying</p> <p>25 that. I'm saying I can't answer the</p>

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<p>1 Q. I'm going to have marked 2 Exhibit 15, and the exhibit in the top 3 right-hand corner is 2004_06_17. And for 4 those of you playing at home, this is an 5 excerpt from another Congressional record. 6 This Congressional record was 7 900 pages long, and so I did not copy the 8 whole thing; I just pulled out the part that 9 interested me.</p> <p>10 This is part of the US Senate 11 Permanent Subcommittee on Investigations, and 12 it was a hearing in June of 2004. And the 13 title of the hearing was "Buyers Beware: The 14 Dangers of Purchasing Pharmaceuticals Over 15 the Internet."</p> <p>16 Now, McKesson has some 17 experience with this, agreed?</p> <p>18 MS. HENN: Objection to form.</p> <p>19 THE WITNESS: Can you define -- 20 experience. What type of experience?</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. Well, McKesson was selling to 23 Internet pharmacies in this time frame, 24 agreed?</p> <p>25 MS. HENN: Objection to form.</p>	<p>1 you're seeing that? 2 MR. FARRELL: Yeah, it's up on 3 the screen there, and it's in the very 4 middle.</p> <p>5 MS. HENN: Thank you. I 6 appreciate that.</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. So does McKesson -- first, does 9 McKesson acknowledge that it is an associate 10 member of the Pharmaceutical Research and 11 Manufacturers of America?</p> <p>12 MS. HENN: Objection to form.</p> <p>13 Outside the scope.</p> <p>14 THE WITNESS: I can't speak to 15 that. I don't know.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. I'll represent to you -- I'll 18 represent to you that you are.</p> <p>19 A. Okay.</p> <p>20 Q. And do you know who this Rudy 21 Giuliani fellow is?</p> <p>22 A. I do know who Mr. Giuliani is.</p> <p>23 Q. He's a lawyer, too, isn't he?</p> <p>24 A. He is.</p> <p>25 Q. And he was hired to do this</p>
<p>1 THE WITNESS: I believe so.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. Well, McKesson should know so 4 because you paid a \$13 million fine to the 5 DEA for doing that very thing in 2008.</p> <p>6 MS. HENN: Objection to form.</p> <p>7 THE WITNESS: Understood.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. Okay. So this is a report, and 10 it was -- if you flip to page 2, it was 11 generated by a company called the 12 Pharmaceutical Research Manufacturers of 13 America. I guess they call it PhRMA. 14 Is that how you say it?</p> <p>15 A. I don't know.</p> <p>16 Q. Well, McKesson is a member of 17 this organization, and so colloquially within 18 your ranks do you call it PhRMA? PhRMA? 19 PhRMA? What do you say?</p> <p>20 MS. HENN: Counsel, I'm sorry, 21 just a quick clarification. I'm not 22 seeing a reference -- I see reference 23 to Giuliani and his organization, but 24 I don't see PhRMA.</p> <p>25 Can you just point out where</p>	<p>1 investigation by the pharmaceutical industry. 2 Do you see that? 3 MS. HENN: Objection to form.</p> <p>4 Outside the scope.</p> <p>5 THE WITNESS: I don't know if I 6 see where specifically it states that.</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. It says, "Giuliani Partners has 9 been" --</p> <p>10 A. Oh, in the middle. Okay.</p> <p>11 Sorry.</p> <p>12 Q. They have been retained by 13 PhRMA to do an evaluation.</p> <p>14 A. Understood. I see that.</p> <p>15 Q. Now what I'm going to have you 16 do is I'm going to have you flip over to 17 page 4, and it's interesting what Rudy 18 Giuliani found.</p> <p>19 Do you see where it says "the 20 distribution chain"?</p> <p>21 It says, "On its face, it 22 appears that the distribution chain for 23 prescription medicines in the United States 24 is fairly straightforward."</p> <p>25 A. I was on the wrong number 4.</p>

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<p>1 I see where it says that.</p> <p>2 Q. And it says, "Manufacturers</p> <p>3 sell their products to wholesalers."</p> <p>4 That'd be you, McKesson,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. "Who, in turn, sell the</p> <p>8 products to retail pharmacies and stores,</p> <p>9 who, in turn, dispense medicines to patients</p> <p>10 with prescriptions."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And that's a straightforward</p> <p>14 system is what Rudy Giuliani is saying.</p> <p>15 Will you read the next</p> <p>16 sentence, please?</p> <p>17 A. "It is not until the system is</p> <p>18 studied in greater detail that one begins to</p> <p>19 appreciate both the complexities and the</p> <p>20 vulnerability of the distribution chain and</p> <p>21 potential for exploitation or abuse."</p> <p>22 Q. So big pharma is acknowledging</p> <p>23 in 2004, through hiring their own expert in</p> <p>24 presenting to Congress, that this chain of</p> <p>25 distribution that McKesson is engaged in is</p>	<p>1 pharma's own consultant that the chain of</p> <p>2 distribution, at least in 2004 with respect</p> <p>3 to rogue Internet pharmacies in particular,</p> <p>4 was subject to exploitation or abuse.</p> <p>5 MS. HENN: Objection to form.</p> <p>6 Outside the scope.</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. Agreed that's what it says?</p> <p>9 MS. HENN: Same objections.</p> <p>10 THE WITNESS: Agree that's what</p> <p>11 it says.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. And in fact, McKesson paid a</p> <p>14 fine for some of these exploitations and</p> <p>15 abuse in 2008.</p> <p>16 MS. HENN: Objection to form.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. Agreed?</p> <p>19 A. There was a fine as part of the</p> <p>20 settlement.</p> <p>21 Q. Related to this specific topic?</p> <p>22 MS. HENN: Objection to form.</p> <p>23 THE WITNESS: It was included</p> <p>24 in the settlement.</p> <p>25</p>
<p>1 complex and vulnerable for exploitation or</p> <p>2 abuse, agreed?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 Outside the scope.</p> <p>5 THE WITNESS: It's what they</p> <p>6 listed in here and documented, yes.</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. And the very first factor for</p> <p>9 contributing factors, will you read aloud</p> <p>10 what it says?</p> <p>11 A. "Wholesalers or distributors</p> <p>12 are primarily regulated by the states, with</p> <p>13 no uniform standards across state borders.</p> <p>14 States have a comparatively small number of</p> <p>15 investigators to monitor the licensed</p> <p>16 wholesalers; thus, given the sheer number of</p> <p>17 wholesalers, oversight is minimal."</p> <p>18 Q. In the very next paragraph it</p> <p>19 says, "There are thousands of secondary</p> <p>20 pharmaceutical wholesalers in addition to</p> <p>21 McKesson, AmerisourceBergen and Cardinal</p> <p>22 Health, the big three."</p> <p>23 Do you see that sentence?</p> <p>24 A. I see that.</p> <p>25 Q. So this is a recognition by big</p>	<p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. So yes?</p> <p>3 A. Yes.</p> <p>4 Q. So in 2004, we've got big</p> <p>5 pharma acknowledging the chain of custody for</p> <p>6 wholesalers is subject to exploitation or</p> <p>7 abuse because of a lack of oversight?</p> <p>8 MS. HENN: Objection to form.</p> <p>9 Outside the scope.</p> <p>10 THE WITNESS: Would you say</p> <p>11 that again? Ask --</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. In 2004, big pharma hired Rudy</p> <p>14 Giuliani's firm to do an evaluation of the</p> <p>15 chain of distribution of prescription</p> <p>16 medicines, and what he found was that the</p> <p>17 chain of distribution was subject to</p> <p>18 exploitation or abuse because of lack of</p> <p>19 oversight?</p> <p>20 A. That's what's stated in the</p> <p>21 document, correct.</p> <p>22 Q. And that during this time</p> <p>23 frame, McKesson paid a fine for that very</p> <p>24 thing?</p> <p>25 MS. HENN: Objection to form.</p>

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<p>1 THE WITNESS: In the 2008 2 settlement, yes.</p> <p>3 QUESTIONS BY MR. FARRELL: 4 Q. And that fine was related to 5 McKesson selling an unusual size of 6 prescription opiate pills to rogue Internet 7 pharmacies?</p> <p>8 MS. HENN: Objection to form. 9 THE WITNESS: Can you ask that 10 again, one more time? Sorry.</p> <p>11 QUESTIONS BY MR. FARRELL: 12 Q. Yeah.</p> <p>13 In this time frame, McKesson 14 ended up paying a fine to the DEA for selling 15 too many opium pills to rogue Internet 16 pharmacies in violation of federal law?</p> <p>17 MS. HENN: Objection to form. 18 THE WITNESS: To be accurate, 19 I'd have to look at the document again 20 in terms of specific language, but it 21 was part of the settlement.</p> <p>22 QUESTIONS BY MR. FARRELL: 23 Q. We'll get to that after lunch. 24 A. Okay. 25 Q. But you acknowledge that what</p>	<p>1 A. It's a letter from DEA to 2 registrants from Joe Rannazzisi. 3 Q. Is this -- you might need help 4 with counsel a little bit on this. 5 I don't see where this letter 6 is addressed to McKesson as the recipient; 7 however, this document was produced by 8 McKesson. And I'm assuming this is the 2006 9 Rannazzisi letter that was sent to McKesson. 10 Is that your understanding? 11 A. Yes. 12 Q. So there's no question 13 September 27, 2006, McKesson received this 14 communication. 15 Do you know whether or not 16 there was one document sent to McKesson or 17 there was a letter sent to each of your 18 distribution facilities? 19 A. That, I do not know. 20 MR. FARRELL: Okay. Can I ask, 21 Counsel, do you know? 22 MS. HENN: I'm sorry, I don't. 23 QUESTIONS BY MR. FARRELL: 24 Q. Anyway, if in fact there is 25 another document that has a specific one,</p>
<p>1 Rudy Giuliani said in 2004 came home to roost 2 with McKesson when it paid a fine in 2008?</p> <p>3 MS. HENN: Objection to form. 4 Outside the scope.</p> <p>5 THE WITNESS: I don't know if I 6 would characterize it as coming home 7 to roost, but they're connected or 8 they're related.</p> <p>9 MR. FARRELL: Take a break. 10 VIDEOGRAPHER: The time is 11 12:04 p.m. We're going off the 12 record. 13 (Off the record at 12:04 p.m.) 14 VIDEOGRAPHER: The time is 15 1:05 p.m. We're back on the record. 16 (McKesson-Hartle Exhibit 16 17 marked for identification.)</p> <p>18 QUESTIONS BY MR. FARRELL: 19 Q. I'm going to reference 20 Exhibit 16 which we've just had marked. The 21 top right-hand corner is 2006_09_27, 22 Bates-stamped MCKMDL00478906. 23 Do you recognize this document? 24 A. I do. 25 Q. What is it?</p>	<p>1 you'll agree with me that all of these 2006 2 letters that were sent out, they were sent 3 out to all the registrants across the 4 country? 5 MS. HENN: Objection to form. 6 THE WITNESS: Yeah, that's what 7 I believe to be the case, yeah. 8 QUESTIONS BY MR. FARRELL: 9 Q. In fact, the first sentence 10 says -- 11 A. Right. 12 Q. -- this letter is being sent to 13 every commercial entity in the United 14 States -- 15 A. Right. 16 Q. -- registered -- 17 A. Whether it went to all of our 18 individual DCs, I can't confirm, but -- 19 Q. But sitting here today as the 20 McKesson corporate designee, you acknowledge 21 receipt of the September 27, 2006 letter from 22 Joe Rannazzisi? 23 A. Yes. 24 Q. My understanding -- and we'll 25 get into it other documents -- is that prior</p>

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<p>1 prescription drug abuse problem in the United 2 States of America. That's in the very first 3 paragraph.</p> <p>4 Does McKesson acknowledge that?</p> <p>5 A. Yes.</p> <p>6 Q. The next sentence says, "As 7 each of you is undoubtedly aware, the abuse, 8 nonmedical use, of controlled prescription 9 drugs is a serious and growing health problem 10 in the country."</p> <p>11 Does McKesson agree and 12 acknowledge that fact as of 2006?</p> <p>13 MS. HENN: Objection to form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 QUESTIONS BY MR. FARRELL:</p> <p>16 Q. The next full paragraph says, 17 "The Controlled Substances Act was designed 18 by Congress to combat diversion by providing 19 for a closed system of drug distribution in 20 which all legitimate handlers of controlled 21 substances must obtain a DEA registration; as 22 a condition of maintaining such registration, 23 must take reasonable steps to ensure that 24 their registration is not being utilized as a 25 source of diversion."</p>	<p>1 substances has a substantial and detrimental 2 effect on the health and general welfare of 3 the American people."</p> <p>4 Q. So again, this is the DEA 5 reiterating what we've discussed before: 6 that failing to abide by the Code of Federal 7 Regulations has a substantial and detrimental 8 effect on the health and general welfare of 9 the American people.</p> <p>10 Does McKesson agree and 11 acknowledge with that fact?</p> <p>12 MS. HENN: Objection to form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. Go to the next page, page 2, 16 the second full paragraph. It says, 17 "Nonetheless, given the extent of 18 prescription drug abuse in the United States, 19 along with the potential -- along with 20 dangerous and potentially lethal consequences 21 of such abuse" -- will you please finish that 22 sentence?</p> <p>23 A. "Even just one distributor that 24 uses its DEA registration to facilitate 25 diversion can cause enormous harm."</p>
<p>1 Does McKesson acknowledge and 2 agree with that statement?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: I agree with 5 that.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. I'd like you to read the next 8 sentence aloud, please.</p> <p>9 A. Where it starts "distributors 10 are"?</p> <p>11 Q. Yes.</p> <p>12 A. "Distributors are, of course, 13 one of the key components of the distribution 14 chain."</p> <p>15 Q. Keep going, please.</p> <p>16 A. You want me to read the whole 17 paragraph? Okay.</p> <p>18 "If the closed system is to 19 function properly as Congress envisioned, 20 distributors must be vigilant in deciding 21 whether a prospective customer can be trusted 22 to deliver controlled substances only for 23 lawful purposes. The responsibility is 24 critical, as Congress has expressly declared 25 that the illegal distribution of controlled</p>	<p>1 Q. Does McKesson acknowledge and 2 accept that fact?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: I agree with 5 that.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. If you go down to the third to 8 last paragraph, it says, "In addition to 9 reporting all suspicious orders, a 10 distributor has a statutory responsibility to 11 exercise due diligence to avoid filling 12 suspicious orders that might be diverted into 13 other than legitimate medical, scientific and 14 industrial channels."</p> <p>15 Does McKesson acknowledge and 16 accept that to be true?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 THE WITNESS: Yes.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. And then the last sentence of 21 the next paragraph says at the end, "The 22 distributor should exercise due care in 23 confirming the legitimacy of all orders prior 24 to filing."</p> <p>25 Do you see that sentence?</p>

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<p>1 Not "filling." "Prior to 2 filling." 3 A. I see that sentence. 4 Q. All right. Since I butchered 5 that sentence, will you please read the last 6 sentence that's highlighted on the screen? 7 A. "The distributor should 8 exercise due care in confirming the 9 legitimacy of all orders prior to filling." 10 Q. Now, this is in September 11 of 2006, agreed? 12 A. Agreed. 13 Q. And this is a clear statement 14 from the DEA; would you agree with that? 15 A. I would agree with that. 16 Q. McKesson's official position is 17 that when it received communications from the 18 DEA, the DEA was clear as of 2006? 19 MS. HENN: Objection to form. 20 Also beyond the scope. 21 THE WITNESS: The only question 22 I would have about possibility is due 23 care, what the definition of what due 24 care means. 25</p>	<p>1 suspicious, agreed? 2 A. That's what's in the document, 3 yes. 4 Q. Okay. Do you disagree with 5 that? 6 A. That they shared that, they -- 7 I don't disagree with that. 8 Q. Yet your Section 55 policy, you 9 testified this morning, you were shipping 10 suspicious orders? 11 MS. HENN: Objection to form. 12 THE WITNESS: There was a 13 process by which those reports were 14 reviewed, which I would consider to be 15 part of due care in a review. 16 QUESTIONS BY MR. FARRELL: 17 Q. Is there a due care file for 18 each of those? 19 MS. HENN: Objection to form. 20 THE WITNESS: Not that I'm 21 aware of. 22 QUESTIONS BY MR. FARRELL: 23 Q. So there's no documentation of 24 the due care of each suspicious order that 25 was shipped by McKesson in accordance with</p>
<p>1 QUESTIONS BY MR. FARRELL: 2 Q. Okay. Fair. Fair enough. 3 If you flip to the next page, 4 there's a laundry list of due care. 5 Do you agree on page 3 going 6 through this, the DEA was clear with McKesson 7 about the circumstances that might be 8 indicative of diversion? 9 MS. HENN: Objection to form. 10 THE WITNESS: I wouldn't 11 classify these -- I wouldn't call them 12 due care. These are to be red flags, 13 indicators. 14 QUESTIONS BY MR. FARRELL: 15 Q. So in 2006, the DEA is telling 16 McKesson, you have to exercise due care prior 17 to filling an order which you deem to be 18 suspicious, agreed? 19 MS. HENN: Objection to form. 20 THE WITNESS: Could you ask 21 that again? Restate that? 22 QUESTIONS BY MR. FARRELL: 23 Q. In 2006, the DEA is telling 24 McKesson, you have to exercise due care prior 25 to filling an order which you deem to be</p>	<p>1 the July 2000 policies and procedures? 2 MS. HENN: Objection to form. 3 THE WITNESS: Could you restate 4 that, please? 5 QUESTIONS BY MR. FARRELL: 6 Q. Is there any documentation of 7 the due care performed by McKesson from 8 July 2000 onward pursuant to Section 55 with 9 regard to suspicious orders that were 10 shipped? 11 MS. HENN: Objection to form. 12 Outside the scope. 13 THE WITNESS: I can't speak to 14 the specific documentation and how it 15 was documented those reviews that were 16 conducted of those specific reports 17 that were generated. Could have been 18 documentation on a form. 19 QUESTIONS BY MR. FARRELL: 20 Q. Have you seen such 21 documentation? 22 MS. HENN: Objection to form. 23 THE WITNESS: I haven't 24 personally seen examples of that.</p>

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1 A. Correct. 2 Q. McKesson, in July of 2000, 3 adopted a policy that we've been referring to 4 as Section 55 -- 5 A. Correct. 6 Q. -- to do that very thing? 7 A. Correct. 8 Q. That policy states that it's 9 not a subjective determination of whether to 10 report; it's a statistical fact of whether 11 you should report? 12 MS. HENN: Objection to form. 13 THE WITNESS: The report is a 14 statistical -- a statistically 15 generated one, yes. 16 QUESTIONS BY MR. FARRELL: 17 Q. And whether to report it to the 18 DEA is not a subjective determination; it's 19 mandatory if you detect a suspicious order? 20 MS. HENN: Objection to form. 21 Outside the scope. 22 THE WITNESS: I believe that to 23 be the case. 24 QUESTIONS BY MR. FARRELL: 25 Q. So if you didn't do that, it's	1 Sir, have you seen this 2 document before today? 3 A. I don't believe I've seen this 4 specific one. 5 Q. I'll give you a minute to 6 review. 7 A. Okay. I've read that. Thank 8 you for taking the time. 9 Q. No problem. 10 So to start off with on this 11 exhibit, you acknowledge that there was a 12 meeting with the DEA on April 5, 2007. It's 13 from the very first paragraph. 14 A. Yes. 15 Q. So at this point in time, the 16 DEA had issued an order to show cause against 17 McKesson, agreed? 18 A. Correct. 19 Q. I've yet to see any 20 documentation of anything that predates 21 April 25, 2007, related to this 22 investigation. 23 Have you seen such documents? 24 MS. HENN: Objection to form. 25 THE WITNESS: I don't believe
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1 a violation of federal law? 2 MS. HENN: Objection to form. 3 Outside the scope. 4 THE WITNESS: I believe so. 5 QUESTIONS BY MR. FARRELL: 6 Q. Big if, right? 7 A. If, right. 8 Q. If that happened, if McKesson 9 detected a suspicious order following the 10 Section 55 enactment and did not report it to 11 the DEA, that's a violation of federal law? 12 A. If. 13 MS. HENN: Objection to form. 14 (McKesson-Hartle Exhibit 17 15 marked for identification.) 16 QUESTIONS BY MR. FARRELL: 17 Q. I'm going to mark what's going 18 to be Exhibit 17. The document ID is 19 2007_04_25. I apologize, there is no MDL 20 Bates stamp that I could locate; however, 21 there is a prior production Bates stamp of 22 MCK-HOI-002 dash a whole bunch of zeros and 23 then 1. 24 I'll give you a few minutes to 25 look through this.	1 so, no. 2 QUESTIONS BY MR. FARRELL: 3 Q. To the extent that such 4 documents do exist, we again reserve our 5 right to come back and discuss them further, 6 subject to the objection of counsel. 7 But for what we have here, this 8 appears that at least in April of 2007, the 9 DEA had already issued a rule to show cause 10 complaining that one of your distribution 11 centers was not following federal law, 12 agreed? 13 MS. HENN: Objection to form. 14 THE WITNESS: That's what they 15 alleged. 16 QUESTIONS BY MR. FARRELL: 17 Q. When you go to page 2 under 18 Proposed Action Plan, does this indicate to 19 you that McKesson is acknowledging that they 20 need to do better to comply with federal law? 21 MS. HENN: Objection to form. 22 THE WITNESS: I think this is 23 acknowledge -- excuse me -- 24 acknowledgement of just improvements 25 in the program, taking information in

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<p>1 to evolve the program based on 2 collaboration with DEA and information 3 they're receiving.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. You're in management, are you 6 not?</p> <p>7 A. I am.</p> <p>8 Q. And have you ever written a 9 proposed action plan for an employee?</p> <p>10 A. I have.</p> <p>11 Q. And is it just to document 12 something new, or are you trying to correct 13 something?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 THE WITNESS: There can be many 16 different types of action plans. I've 17 done both.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Okay. In this one, the very 20 first sentence says, "We," meaning McKesson, 21 "agree that it is in McKesson's interest to 22 implement a program across all of its DCs 23 that can assist the company in identifying 24 potential excessive purchases and enable the 25 company to work more closely with the DEA."</p>	<p>1 MS. HENN: Objection to form. 2 THE WITNESS: I don't think 3 it's that black and white in terms of 4 how you implement a program in 5 business, or when you mentioned a 6 personnel action plan, it could be a 7 combination of both. It could be to 8 improve upon what you've been doing 9 because of new information or trends 10 or data that you've received. It 11 could be a number of things.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. As a McKesson corporate 14 designee, are you willing to admit here today 15 that as of April 25, 2007, McKesson was not 16 fulfilling its obligations under federal law 17 regarding the monitoring of the distribution 18 of controlled substances?</p> <p>19 MS. HENN: Objection to form.</p> <p>20 THE WITNESS: Can you ask that 21 again, please?</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. As a McKesson corporate 24 designee, are you willing to admit here today 25 that as of April 25, 2007, McKesson was not</p>
<p>1 Did I read that accurately?</p> <p>2 A. You did.</p> <p>3 Q. So as of April 25th of 2007, 4 McKesson did not have a program across all of 5 its distribution centers, did it?</p> <p>6 MS. HENN: Object to form.</p> <p>7 THE WITNESS: I believe that's 8 accurate. The review of suspicious 9 orders, the DU 45s, consider that to 10 be programmatic, or a program.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. So then why did your lawyers 13 for McKesson tell the DEA you were 14 implementing a program across all the 15 distribution centers?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. There's only one of two 19 reasons: One is that there was no program, 20 or two is that all of the distribution 21 centers were not following it.</p> <p>22 MS. HENN: Objection to form.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Can you think of a third 25 alternative?</p>	<p>1 Page 183</p> <p>1 fulfilling its obligations under federal law 2 regarding the distribution of controlled 3 substances?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: I believe in 6 partnership with DEA and always in 7 good faith, McKesson was believed to 8 be compliant with the regulations.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. I understand that McKesson as a 11 corporate entity -- McKesson, it's not a 12 person, right? McKesson Corporation is a 13 fictional piece of paper that creates a 14 business model, agreed?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. Is there a Mr. McKesson still 18 running the company?</p> <p>19 A. No, there's not.</p> <p>20 Q. All right. So McKesson is a 21 corporation?</p> <p>22 A. Agreed. I understand that.</p> <p>23 Q. And in April of 2007, it was 24 meeting with the federal government, the DEA, 25 and changing the way it was doing business,</p>

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<p>1 agreed?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 THE WITNESS: Changing,</p> <p>4 enhancing, adding.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Okay. And in part, it was</p> <p>7 because McKesson was not fulfilling its</p> <p>8 obligations under federal law?</p> <p>9 MS. HENN: Objection to form.</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. Can that even be disputed?</p> <p>12 MS. HENN: Same objection.</p> <p>13 QUESTIONS BY MR. FARRELL:</p> <p>14 Q. You paid a \$13 million fine as</p> <p>15 a result of this investigation.</p> <p>16 Can you not acknowledge today,</p> <p>17 in 2007 there were shortcomings in your</p> <p>18 controlled substance monitoring program?</p> <p>19 MS. HENN: Objection to form.</p> <p>20 THE WITNESS: We denied those</p> <p>21 allegations in that settlement, and we</p> <p>22 obviously -- as any program does,</p> <p>23 wants to improve and expand and take</p> <p>24 new information in.</p> <p>25</p>	<p>1 it says you're going to implement this</p> <p>2 Lifestyle Drug Monitoring Program by May 1,</p> <p>3 2007.</p> <p>4 Do you see that paragraph?</p> <p>5 A. I do.</p> <p>6 Q. So is it fair to say that</p> <p>7 Section 55, which was in force beginning in</p> <p>8 July of 2000, was replaced on May 1, 2007, by</p> <p>9 the Lifestyle Drug Monitoring Program?</p> <p>10 MS. HENN: Objection to form.</p> <p>11 THE WITNESS: I don't think</p> <p>12 it's fair to say it was completely</p> <p>13 replaced.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. Modified, amended.</p> <p>16 So that we're no longer</p> <p>17 referencing Section 55, we're now going to</p> <p>18 begin referencing the Lifestyle Drug</p> <p>19 Monitoring Program.</p> <p>20 MS. HENN: Objection to form.</p> <p>21 THE WITNESS: There's</p> <p>22 components of both that still existed.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Formulated and assimilated into</p> <p>25 the Lifestyle Drug Monitoring Program?</p>
<p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. So you paid \$13 million as a</p> <p>3 tax write-off?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: As a settlement</p> <p>6 between both parties.</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. To settle what? Allegations of</p> <p>9 what?</p> <p>10 MS. HENN: Objection to form.</p> <p>11 THE WITNESS: Issues related to</p> <p>12 the regulations.</p> <p>13 QUESTIONS BY MR. FARRELL:</p> <p>14 Q. The allegations were that</p> <p>15 McKesson was not fulfilling its obligations</p> <p>16 under federal law, agreed?</p> <p>17 A. That was the allegations.</p> <p>18 Q. And McKesson wrote an action</p> <p>19 plan and paid a fine to the DEA to get a</p> <p>20 release for its conduct?</p> <p>21 MS. HENN: Objection to form.</p> <p>22 THE WITNESS: I think that's</p> <p>23 accurate. We did.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. And on page 2 of this exhibit,</p>	<p>1 Page 187</p> <p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: Parts of it.</p> <p>3 This was an advancement of that.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. Okay. You'll see in</p> <p>6 paragraph 2 that it says that you are</p> <p>7 "developing the technology that will enable</p> <p>8 each McKesson distribution center to generate</p> <p>9 an automated report to identify threshold</p> <p>10 sales."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Prior to this, you did not have</p> <p>14 that technology?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 THE WITNESS: I can't speak to</p> <p>17 whether we actually had the technology</p> <p>18 to create a report like that, but I</p> <p>19 think this is referencing -- you know,</p> <p>20 putting that into -- into play with</p> <p>21 the idea of establishing thresholds</p> <p>22 and creating reports off of that. So</p> <p>23 we didn't have that report.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. You remember this morning we</p>

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<p>1 a...</p> <p>2 Q. Maybe this is just a</p> <p>3 terminology issue.</p> <p>4 A. Might be.</p> <p>5 Q. Block -- all I'm saying is, is</p> <p>6 that McKesson's not allowed to ship a</p> <p>7 suspicious order without looking into it</p> <p>8 first, agreed?</p> <p>9 MS. HENN: Objection to form.</p> <p>10 THE WITNESS: That's how I read</p> <p>11 that language.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. That is the law?</p> <p>14 A. Yeah.</p> <p>15 Q. Yes?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 THE WITNESS: The law is to</p> <p>18 design a system to identify suspicious</p> <p>19 orders.</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. That's one part of the law.</p> <p>22 A. Right.</p> <p>23 Q. What does the CFR say?</p> <p>24 MS. HENN: Objection to form.</p> <p>25 THE WITNESS: To identify</p>	<p>1 MS. HENN: Objection to form.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. Let's get back to it.</p> <p>4 Masters Pharmaceutical has a</p> <p>5 reporting requirement and a shipping</p> <p>6 requirement. We reviewed it this morning,</p> <p>7 agreed?</p> <p>8 A. Parts of it, correct. Agreed.</p> <p>9 Q. It's premised upon a code</p> <p>10 provision. The United States Congress passed</p> <p>11 a US Code provision in 1970, agreed?</p> <p>12 A. Agreed.</p> <p>13 Q. And it passed -- the Department</p> <p>14 of Justice enacted regulations which are</p> <p>15 binding as federal law related to this very</p> <p>16 topic, agreed?</p> <p>17 A. Agreed.</p> <p>18 Q. And if you don't follow those</p> <p>19 rules, McKesson can be fined by the federal</p> <p>20 government?</p> <p>21 A. Agreed.</p> <p>22 Q. McKesson's been fined twice</p> <p>23 that I know of, once for 13 million in 2008</p> <p>24 and once for 150 million in 2017, for</p> <p>25 violating these very laws.</p>
<p>1 orders of unusual size, pattern and</p> <p>2 frequency.</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. And so if you ship a suspicious</p> <p>5 order without doing due diligence, is that</p> <p>6 lawful or unlawful?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 THE WITNESS: Again, I'm -- the</p> <p>9 CFR says you must design and operate a</p> <p>10 system, right, and to identify</p> <p>11 suspicious orders. I don't believe it</p> <p>12 says to halt them.</p> <p>13 QUESTIONS BY MR. FARRELL:</p> <p>14 Q. It does?</p> <p>15 A. In that specific language.</p> <p>16 Q. It does or does not?</p> <p>17 A. Does not.</p> <p>18 Q. Is your interpretation of</p> <p>19 federal law that you're allowed to ship a</p> <p>20 suspicious order without conducting due</p> <p>21 diligence?</p> <p>22 MS. HENN: Objection to form.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Maybe this explains why</p> <p>25 McKesson paid a \$150 million fine.</p>	<p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: That's what was</p> <p>3 alleged.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. So my question to you is: Is</p> <p>6 that the shipping requirement that you have</p> <p>7 to halt a suspicious order under federal law</p> <p>8 until you do due diligence is and always has</p> <p>9 been the law in the United States of America?</p> <p>10 MS. HENN: Objection to form.</p> <p>11 Outside the scope.</p> <p>12 THE WITNESS: Can you ask that</p> <p>13 again, please?</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. The shipping requirement and</p> <p>16 the reporting requirement as outlined in the</p> <p>17 Masters Pharmaceutical case is and always has</p> <p>18 been the law in the United States of America?</p> <p>19 MS. HENN: Objection to form.</p> <p>20 Outside the scope.</p> <p>21 THE WITNESS: I believe that's</p> <p>22 the law. I mean...</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Well, you're McKesson --</p> <p>25 MS. HENN: Did you finish your</p>

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<p>1 County?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 Outside the scope.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. It's okay if you haven't, and I</p> <p>6 don't want you guessing.</p> <p>7 A. No, I understand.</p> <p>8 I've seen files. I don't know</p> <p>9 about files during this time frame with a</p> <p>10 Level 1, 2 or 3 review. I can't recall.</p> <p>11 Q. Let me ask you this: How --</p> <p>12 how many pharmacies in May of 2007, in</p> <p>13 Cuyahoga and Summit County, do you reckon</p> <p>14 ordered more than 8,000 pills of hydrocodone</p> <p>15 or oxycodone?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 Outside the scope.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 I'd be guessing.</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. Let's say there's ten. Should</p> <p>22 there be ten customer files that document why</p> <p>23 McKesson was exceeding 8,000 pills a month?</p> <p>24 MS. HENN: Objection to form.</p> <p>25 THE WITNESS: There should be</p>	<p>1 Q. Then it would be lawful or</p> <p>2 unlawful?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: It would be</p> <p>5 unlawful.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. So it's summarizing altogether.</p> <p>8 If in May of 2007 McKesson is shipping to a</p> <p>9 pharmacy in Cuyahoga or Summit County,</p> <p>10 Cleveland, Ohio, or Akron, Ohio, more than</p> <p>11 8,000 pills of hydrocodone or more than 8,000</p> <p>12 pills of oxycodone, without conducting a due</p> <p>13 diligence review, then McKesson is engaging</p> <p>14 in unlawful conduct according to federal law,</p> <p>15 agreed?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 THE WITNESS: Can you ask it</p> <p>18 again? I apologize. Let's pause</p> <p>19 here. I'm not a lawyer.</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. I know you're not. And again,</p> <p>22 I'm going to reiterate --</p> <p>23 A. There's discretion in how this</p> <p>24 due diligence is done and documented, so I'm</p> <p>25 trying to understand.</p>
<p>1 documentation.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. And if there was no due</p> <p>4 diligence performed but those pills were</p> <p>5 still shipped, is that lawful or unlawful?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. Do you want me to repeat the</p> <p>9 question?</p> <p>10 A. Sure.</p> <p>11 Q. If, if, if, three ifs, no due</p> <p>12 diligence was performed, yet McKesson still</p> <p>13 shipped more than 8,000 oxycodone pills to a</p> <p>14 pharmacy in Cuyahoga or Summit County in May</p> <p>15 of 2007, is that lawful or unlawful according</p> <p>16 to the federal regulations?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Why are you struggling with</p> <p>20 this?</p> <p>21 A. I'm just thinking. I mean,</p> <p>22 it's -- if it's -- it wouldn't be lawful.</p> <p>23 Q. That makes it...</p> <p>24 A. If there weren't documentation.</p> <p>25 Or due diligence, excuse me.</p>	<p>1 Q. That's right. So -- you're</p> <p>2 right. So let me see if I can say it again.</p> <p>3 If in May of 2007 McKesson</p> <p>4 Corporation is shipping to a pharmacy in</p> <p>5 Cuyahoga or Summit County, Cleveland, Ohio,</p> <p>6 or Akron, Ohio, more than 8,000 pills of</p> <p>7 oxycodone or more than 8,000 pills of</p> <p>8 hydrocodone without conducting due diligence,</p> <p>9 then McKesson Corporation is engaging in</p> <p>10 unlawful conduct according to federal law?</p> <p>11 MS. HENN: Object to form.</p> <p>12 THE WITNESS: I don't know how</p> <p>13 to answer that exactly. It depends.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. Depends on what?</p> <p>16 If you ship more than 8,000</p> <p>17 pills without conducting due diligence,</p> <p>18 McKesson is engaging in unlawful conduct</p> <p>19 according to federal law?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 Go ahead.</p> <p>22 THE WITNESS: It can be</p> <p>23 interpreted that way. I mean, it --</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. Well, the DEA certainly</p>

1 interprets it that way, agreed? 2 A. They have. 3 Q. And McKesson has paid fines 4 based on that DEA interpretation, agreed? 5 MS. HENN: Objection to form. 6 THE WITNESS: We've paid fines. 7 Again, we're -- 8 QUESTIONS BY MR. FARRELL: 9 Q. Based on the allegations by the 10 DEA that you shipped suspicious orders 11 without conducting due diligence? 12 MS. HENN: Objection to form. 13 Go ahead. 14 THE WITNESS: Based on those 15 allegations. 16 QUESTIONS BY MR. FARRELL: 17 Q. Yes. 18 A. Right. 19 Q. The answer is yes? 20 A. Yes. 21 Q. See, a yes just gets me moving 22 faster. Oh, this one's gonna be fun. 23 MR. FARRELL: Why don't we take 24 a quick break. 25 MS. HENN: Okay.	Page 214 1 A. This is a presentation given by 2 Don Walker about -- at a company meeting 3 about the Lifestyle Drug Program. 4 Q. And Don Walker at the time 5 was -- would be working for McKesson? 6 A. Yes. 7 Q. So this is a McKesson document? 8 A. Excuse me, yes. 9 Q. It's produced in the MDL by the 10 McKesson lawyers? 11 A. Yes. 12 Q. From the McKesson files? 13 A. Yes. 14 Q. And is a true and accurate copy 15 of the presentation given at the national 16 operations conference in 2007? 17 MS. HENN: Objection to form. 18 THE WITNESS: Yes, I believe 19 so. I wasn't there, but I believe so, 20 yeah. 21 QUESTIONS BY MR. FARRELL: 22 Q. So this national operations 23 conference 2007, this is a conference that is 24 just for McKesson employees. Is that your 25 understanding?
Page 215 1 VIDEOGRAPHER: The time is 2 2:08 p.m., and we're going off the 3 record. 4 (Off the record at 2:08 p.m.) 5 VIDEOGRAPHER: The time is 6 2:20 p.m., and we're back on the 7 record. 8 (McKesson-Hartle Exhibit 18 9 marked for identification.) 10 QUESTIONS BY MR. FARRELL: 11 Q. The next exhibit we're going to 12 have marked is Exhibit 18. 13 For reference, the top 14 right-hand corner is 2007_04_XX. The reason 15 it's XX is the metadata has not yet told me 16 what day of the month it is. 17 Do you know what day of the 18 month this conference was back in 2007? 19 A. I can't think off the top of my 20 head, no. Yeah. 21 Q. The Bates stamp, we have a MDL 22 Bates stamp of MCKMDL00403340. 23 Do you recognize this document? 24 A. I do. 25 Q. What is it?	Page 217 1 A. Yeah, they typically are. 2 Q. It's from -- Mr. Boggs 3 testified about it previously. So this was 4 in 2007. Management basically gets together, 5 and Don Walker is the senior vice president 6 of distribution operations, is giving a 7 presentation on a number of topics in the 8 form of a PowerPoint slide? 9 A. Correct. 10 MS. HENN: Objection to form. 11 QUESTIONS BY MR. FARRELL: 12 Q. Yes? 13 A. Correct. 14 Q. So the title of this is 15 "Lifestyle Drugs and Internet Pharmacies." 16 "Lifestyle drugs" is an 17 interesting choice of words. 18 Do you know where it came from? 19 A. It's my understanding that's 20 the language that was -- the DEA used as well 21 and had referenced. 22 Q. Some of the files that I've 23 seen has the DEA asking McKesson where you 24 came up with the oxycodone, hydrocodone and 25 opium pills as lifestyle drugs.

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<p>1 MS. HENN: Objection to form. 2 THE WITNESS: All I can tell 3 you is I -- what I've heard is that 4 it's the term that came from DEA. 5 QUESTIONS BY MR. FARRELL: 6 Q. On page 2, it identifies 7 several different topics: public health 8 issue, DEA focus, McKesson involvement, 9 current status, and Lifestyle Drug Monitoring 10 Program. So these will be our jeopardy 11 questions today. 12 Public health issues. Can you 13 read what the very -- on page 3, can you read 14 what the first item is? 15 A. "Abuse of prescription drugs 16 has risen 66 percent since 2000." 17 Q. So this is McKesson telling 18 McKesson employees that we're in the business 19 of selling opium pills, and abuse has risen 20 66 percent since 2000. 21 Does that not give you, 22 Mr. McKesson Corporation, pause to think 23 about whether or not your role in the chain 24 of distribution is contributing to the abuse? 25 MS. HENN: Objection to form.</p>	<p>1 trying to make a snarky remark. 2 MS. HENN: Thank you. 3 QUESTIONS BY MR. FARRELL: 4 Q. Not everyone is engaged in the 5 chain of distribution of opium pills, though? 6 MS. HENN: Objection to form. 7 THE WITNESS: Agree. 8 QUESTIONS BY MR. FARRELL: 9 Q. So I'm asking you, McKesson 10 Corporation, whether or not you have any 11 regrets about selling so many opium pills. 12 MS. HENN: Objection to form. 13 Outside the scope. 14 THE WITNESS: Back to your 15 question about this, I would -- sure 16 that gives you pause, I mean, to 17 understand that there's an epidemic 18 out there. And clearly there's many 19 players involved in the flow of 20 distribution. 21 QUESTIONS BY MR. FARRELL: 22 Q. As of 2007, McKesson is 23 recognizing that opioid painkillers kill more 24 than cocaine and heroin combined, agreed? 25 MS. HENN: Objection to form.</p>
<p>1 THE WITNESS: Can you ask that 2 again, please? 3 QUESTIONS BY MR. FARRELL: 4 Q. This is McKesson telling 5 McKesson employees that abuse of prescription 6 drugs has risen 66 percent since the year 7 2000. 8 Does that not give you, 9 Mr. McKesson Corporation, pause to think 10 about whether or not your role in the chain 11 of distribution is contributing to such 12 abuse? 13 MS. HENN: Objection to form. 14 THE WITNESS: I think it's -- 15 it should give everybody pause that 16 that was the trend that was going on, 17 and it's a piece of information shared 18 with leaders to inform them. So -- 19 QUESTIONS BY MR. FARRELL: 20 Q. But not everybody is selling 21 opium pills; McKesson is. 22 MS. HENN: Counsel, can we just 23 make sure we let the witness finish 24 his answers? 25 MR. FARRELL: Sure. I was</p>	<p>1 THE WITNESS: Agree. 2 QUESTIONS BY MR. FARRELL: 3 Q. And these are McKesson's words. 4 Where is McKesson getting this 5 data from? 6 MS. HENN: Objection to form. 7 Outside the scope. 8 THE WITNESS: I don't know 9 specifically where they -- their 10 source of data for that particular 11 line, but information from different 12 sources. Could be DEA, could be CDC, 13 it could be wherever. 14 QUESTIONS BY MR. FARRELL: 15 Q. It says here, "Rogue Internet 16 pharmacies distributing oxycodone, 17 hydrocodone, phentermine and alprazolam," yet 18 McKesson was selling to rogue Internet 19 pharmacies, true? 20 MS. HENN: Objection to form. 21 Outside the scope. 22 THE WITNESS: Can you ask that 23 again, please? 24 QUESTIONS BY MR. FARRELL: 25 Q. McKesson is noting that rogue</p>

<p style="text-align: right;">Page 222</p> <p>1 Internet pharmacies are selling oxycodone and 2 hydrocodone, yet what's missing from this 3 slide is the fact that McKesson was supplying 4 the pills to the rogue Internet pharmacies. 5 MS. HENN: Objection to form. 6 THE WITNESS: And what's your 7 specific question again? 8 QUESTIONS BY MR. FARRELL: 9 Q. What gives? 10 MS. HENN: Objection to form. 11 THE WITNESS: I don't know what 12 type of response a "what gives" 13 question is. 14 QUESTIONS BY MR. FARRELL: 15 Q. Yeah. You're noting that 16 people are dying, and part of the reason is 17 that rogue Internet pharmacies are out there. 18 Yet McKesson, during this time frame, is 19 selling to some of those very same Internet 20 pharmacies, and that's what the DEA fined you 21 for. 22 So is this ignorance of who 23 you're selling to? Is this repackaging, 24 reframing the issue? Or is it just flat out 25 a misrepresentation?</p>	<p style="text-align: right;">Page 224</p> <p>1 QUESTIONS BY MR. FARRELL: 2 Q. You understand that to be true? 3 A. -- I understand that to be 4 true. 5 Q. So McKesson Corporation admits 6 it was selling oxycodone and hydrocodone to 7 rogue Internet pharmacies in and around 2007? 8 MS. HENN: Objection to form. 9 Outside the scope. 10 THE WITNESS: Again, I don't 11 know the specific examples and -- 12 QUESTIONS BY MR. FARRELL: 13 Q. I'm not asking for specific 14 examples. 15 A. Right. 16 Q. I'm asking you to confirm that 17 in 2007, McKesson Corporation was selling 18 oxycodone and hydrocodone to rogue Internet 19 pharmacies. 20 MS. HENN: Objection to form. 21 And, Counsel, I'll just ask you 22 to let him finish his answers so that 23 he can get his answers out. 24 MR. FARRELL: Yes, ma'am. 25 THE WITNESS: Again, I don't</p>
<p style="text-align: right;">Page 223</p> <p>1 MS. HENN: Objection to form. 2 Outside the scope. 3 THE WITNESS: This is raising 4 awareness in -- about the issues that 5 are the public health issues, 6 communicating with leaders and sharing 7 the -- where McKesson is enhancing the 8 program. 9 QUESTIONS BY MR. FARRELL: 10 Q. But you understand that the 11 rogue Internet pharmacies were getting their 12 pills from, among other people, McKesson, 13 agreed? 14 A. I understand. 15 MS. HENN: Objection to form. 16 QUESTIONS BY MR. FARRELL: 17 Q. Agreed? 18 A. I understand. Agreed. 19 Q. I'm asking if you understand. 20 I want you to confirm that the rogue Internet 21 pharmacies were in fact getting some of their 22 pills from McKesson. 23 MS. HENN: Objection to form. 24 THE WITNESS: I don't have 25 specific details on that, but --</p>	<p style="text-align: right;">Page 225</p> <p>1 have the specific examples. I believe 2 that to be true, but I don't know the 3 specific details. 4 QUESTIONS BY MR. FARRELL: 5 Q. The next page, page 4, 6 "Internet pharmacies." It says, 7 "Investigative work hours have doubled." 8 Do you know what it doubled 9 from or to? 10 A. I do not. 11 Q. "Cutting supply critical to 12 success." 13 What does that mean? 14 A. I don't know. I don't know 15 what the speaking points or -- it's one 16 bullet. I'm not sure how it was represented 17 or communicated. 18 Q. Do you know what price 19 diversion is? 20 A. Not specifically. 21 Q. Was McKesson at this time 22 considering that some of the Internet 23 pharmacies were competing with McKesson for 24 business? 25 MS. HENN: Objection to form.</p>

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<p>1 THE WITNESS: I do not know.</p> <p>2 Pricing is not my area.</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. Okay. It says, "Wholesalers."</p> <p>5 DEA expects that you know your customers."</p> <p>6 What does that mean? It's in</p> <p>7 quotations.</p> <p>8 A. Right.</p> <p>9 MS. HENN: Objection to form.</p> <p>10 MR. FARRELL: Well, it is in</p> <p>11 quotations, isn't it?</p> <p>12 MS. HENN: I was objecting to</p> <p>13 asking what DEA means when they said</p> <p>14 "know your customers." That was what</p> <p>15 was my objection.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. So McKesson is writing a slide</p> <p>18 following a meeting with the DEA, reporting</p> <p>19 to the DEA employees what the DEA's focus</p> <p>20 was, and what McKesson is reporting is that</p> <p>21 the DEA expects you to know your customers.</p> <p>22 Is that fair?</p> <p>23 A. That's fair.</p> <p>24 Q. And when we do, quote, "know</p> <p>25 our customers," end quote, that's a tag line</p>	<p>1 Go ahead.</p> <p>2 THE WITNESS: That's what</p> <p>3 the -- that's what the DEA expects, I</p> <p>4 guess, yeah.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Does McKesson acknowledge that</p> <p>7 it is accountable for controlling the</p> <p>8 quantities of opium pills shipped to American</p> <p>9 pharmacies?</p> <p>10 A. We're accountable as a</p> <p>11 distributor.</p> <p>12 Q. The next thing says, "5,000</p> <p>13 dose units is average."</p> <p>14 The average American pharmacy</p> <p>15 in 2007, as reported by the DEA to McKesson,</p> <p>16 was that 5,000 doses of oxycodone or 5,000</p> <p>17 doses of hydrocodone was average.</p> <p>18 A. That's what the DEA -- DEA</p> <p>19 calculations.</p> <p>20 Q. And McKesson at least validated</p> <p>21 that number by repeating it on a slide to the</p> <p>22 national operations conference in 2007.</p> <p>23 MS. HENN: Objection to form.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. Agreed?</p>
Page 227	Page 229
<p>1 for distributors with regard to knowing the</p> <p>2 customers you're selling opium pills to?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: That is a DEA tag</p> <p>5 line.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. And then the next sentence, can</p> <p>8 you read it out loud, please?</p> <p>9 A. The next bullet?</p> <p>10 Q. Yes.</p> <p>11 A. "Wholesalers accountable for</p> <p>12 controlling quantities shipped."</p> <p>13 Q. Is that true or not true?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 THE WITNESS: Can you add a</p> <p>16 little more context to your question?</p> <p>17 I know it's a true/false question,</p> <p>18 but --</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. Yes.</p> <p>21 The DEA expects the wholesalers</p> <p>22 to be accountable for controlling quantities</p> <p>23 that they ship.</p> <p>24 Is that fair or unfair?</p> <p>25 MS. HENN: Objection to form.</p>	<p>1 A. I wouldn't say that they</p> <p>2 validated. We just repeated what was shared.</p> <p>3 Q. Did McKesson undertake any</p> <p>4 investigation to determine what the average</p> <p>5 was itself?</p> <p>6 A. I believe they did. I can't</p> <p>7 speak to the examples, but we've used</p> <p>8 analysts and reviewed data when developing</p> <p>9 thresholds and...</p> <p>10 Q. Does McKesson acknowledge that</p> <p>11 in 2007 5,000 dose units was average in the</p> <p>12 United States of America?</p> <p>13 MS. HENN: Objection to form.</p> <p>14 Outside the scope.</p> <p>15 THE WITNESS: We acknowledge</p> <p>16 that's what the DEA shared. I mean,</p> <p>17 there's many ways to get averages.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Sitting here today, does</p> <p>20 McKesson Corporation have any reason to</p> <p>21 disagree or dispute the DEA's estimation of</p> <p>22 what the average dose unit was?</p> <p>23 MS. HENN: Objection to form.</p> <p>24 Outside the scope.</p> <p>25 THE WITNESS: What I would</p>

1 Nobody, no reasonable person, 2 could say that the DEA failed to tell 3 McKesson what the rules of the road were. 4 MS. HENN: Objection to form. 5 Outside the scope. 6 THE WITNESS: I agree that they 7 mentioned that in many -- in many ways 8 and many times. There's still -- you 9 know, there are areas of the 10 regulation that are still unclear, and 11 DEA does not provide clear guidance on 12 what is an order of unusual size, 13 frequency and pattern. They put that 14 back on the distributors to design our 15 own. 16 So they're not -- they're clear 17 on that guidance, but not on how to do 18 it all the time. 19 QUESTIONS BY MR. FARRELL: 20 Q. All right. So it's clear in 21 2008 what they're telling the DEA -- telling 22 McKesson is that whatever you're doing, we 23 think it's not enough? 24 MS. HENN: Objection to form. 25 THE WITNESS: It's clear that	Page 258 1 QUESTIONS BY MR. FARRELL: 2 Q. Yes. 3 Would you be a moron if you 4 took the position out of May 2, 2008, that 5 the DEA was unclear as to whether or not you 6 could ship a suspicious order? 7 MS. HENN: Objection to form. 8 Outside the scope. 9 THE WITNESS: I wouldn't call 10 anybody a moron, but it's clear what 11 they expect. 12 QUESTIONS BY MR. FARRELL: 13 Q. And they expect what? 14 A. To design and operate a system 15 to disclose suspicious orders. 16 Q. And? 17 MS. HENN: Objection to form. 18 THE WITNESS: And report. 19 QUESTIONS BY MR. FARRELL: 20 Q. And? 21 MS. HENN: Same objection. 22 QUESTIONS BY MR. FARRELL: 23 Q. Is it clear whether or not you 24 can ship a suspicious order without 25 conducting due diligence?
Page 259 1 that's what they were alleging. 2 QUESTIONS BY MR. FARRELL: 3 Q. And one of the things that's 4 clear is that you have a duty to halt 5 suspicious orders and perform due diligence. 6 Is there any reasonable person 7 in the United States of America as of 2008 8 could possibly argue that it's unclear 9 whether or not you should halt a suspicious 10 order before shipping? 11 MS. HENN: Objection to form. 12 THE WITNESS: I can't speak for 13 all reasonable people in the US. 14 QUESTIONS BY MR. FARRELL: 15 Q. Well, what if somebody came up 16 and said, "We don't know whether or not we 17 have a duty to halt before shipping a 18 suspicious order," what you say to them as of 19 May 2, 2008, on the heels of paying 20 \$13 million to the DEA? 21 MS. HENN: Objection to form. 22 Outside the scope. 23 THE WITNESS: Can you ask that 24 again? 25	Page 261 1 MS. HENN: Objection to form. 2 Outside the scope. 3 THE WITNESS: I think it 4 depends. It's -- there are other 5 types of suspicious order systems. 6 QUESTIONS BY MR. FARRELL: 7 Q. I understand. I'm just trying 8 to take it from a very basic standpoint. 9 Could the DEA have made it any 10 clearer that McKesson has a duty to monitor 11 and detect suspicious orders? 12 MS. HENN: Objection to form. 13 Outside the scope. 14 THE WITNESS: To monitor and 15 detect suspicious orders. 16 QUESTIONS BY MR. FARRELL: 17 Q. That's what it says. 18 A. Very clear. 19 Q. Could they have been any 20 clearer that if you get a suspicious order, 21 you can't just ship it? 22 MS. HENN: Objection to form. 23 Outside the scope. 24 THE WITNESS: That's clear.

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<p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. Clear or very clear?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: It's very clear.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Can you report the suspicious order to the DEA and still ship it?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 Outside the scope.</p> <p>9 THE WITNESS: Can you ask that one again or restate it?</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. Can you report the suspicious order to the DEA and still ship it?</p> <p>12 MS. HENN: Same objections.</p> <p>13 THE WITNESS: Without due diligence or some sort of review?</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. If you're reporting a suspicious order to the DEA, what are you doing?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 THE WITNESS: Okay. Can we start with the original question? I'm getting a little -- I want to make</p>	<p>1 marked for identification.)</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. I'll mark Exhibit 26. Top</p> <p>4 right is 2008_07_031. It's Bates stamp</p> <p>5 MCK-HOI-002-0000042.</p> <p>6 Have you seen this document before?</p> <p>7 A. Yes, I have.</p> <p>8 Q. And what is it?</p> <p>9 A. This is a PowerPoint.</p> <p>10 Q. Made by who?</p> <p>11 A. By McKesson.</p> <p>12 Q. For purposes of?</p> <p>13 A. Discussion with DEA.</p> <p>14 Q. Regarding?</p> <p>15 A. Our controlled substance monitoring program.</p> <p>16 Q. And it's dated when?</p> <p>17 A. It's dated July 31, 2008.</p> <p>18 Q. So this is before or after your settlement agreement with the DEA?</p> <p>19 A. Shortly after.</p> <p>20 Q. So that must have been kind of</p> <p>21 awkward, right, your coming in after paying</p> <p>22 the fine?</p>
<p>1 sure I'm going to answer your question</p> <p>2 right --</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. Yeah, I'm going to show you --</p> <p>5 A. -- the right question.</p> <p>6 Q. I'm going to show you here in a</p> <p>7 few minutes some of your brethren who still</p> <p>8 haven't gotten the message by May 2008, and</p> <p>9 I'm trying to see if you'll call them morons.</p> <p>10 So what I'm asking you is from</p> <p>11 McKesson's corporation, is it clear by May 2,</p> <p>12 2008, you -- the shipping requirement and the</p> <p>13 reporting requirement?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 Outside the scope.</p> <p>16 THE WITNESS: That's how we</p> <p>17 designed our program, and that's what</p> <p>18 we believed it to be.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. Based on federal law?</p> <p>21 MS. HENN: Objection to form.</p> <p>22 THE WITNESS: Based on the</p> <p>23 regulations and the guidance and the</p> <p>24 information we collected.</p> <p>25 (McKesson-Hartle Exhibit 26</p>	<p>1 What are you doing here? Are</p> <p>2 you giving the DEA an update of all of the</p> <p>3 parts of your action plan you're</p> <p>4 implementing?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 THE WITNESS: I can't say if it</p> <p>7 was awkward or not, but standard -- or</p> <p>8 a communication and updating them on</p> <p>9 what we were doing.</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. Go to page 004. Roman numeral</p> <p>12 number III, "Block orders that exceed</p> <p>13 thresholds."</p> <p>14 That's because you have a duty</p> <p>15 to halt suspicious orders, correct?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 Outside the scope.</p> <p>18 THE WITNESS: That's how we</p> <p>19 designed our new program, to block.</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. And is that a requirement of</p> <p>22 federal law?</p> <p>23 A. It's our interpretation of how</p> <p>24 we --</p> <p>25 MS. HENN: Same objection.</p>

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1 Go ahead. 2 THE WITNESS: Our 3 interpretation of how -- what we 4 thought we needed to do with our 5 program. 6 QUESTIONS BY MR. FARRELL: 7 Q. Page 5. In April of 2007, you 8 created your three-tier review process. 9 Do you see that? 10 A. Correct. Yep. 11 Q. That means prior to that, you 12 didn't have a three-tier review process -- 13 MS. HENN: Objection to form. 14 QUESTIONS BY MR. FARRELL: 15 Q. -- under Section 55. 16 MS. HENN: Objection to form. 17 THE WITNESS: We did not. We 18 had a different process. 19 QUESTIONS BY MR. FARRELL: 20 Q. September 2007, DEA meeting 21 triggered new development. This is your new 22 CSMP, and this is what you're describing to 23 the DEA, agree? 24 A. Agree. 25 Q. Bate Stamp 8. If you're over	1 Is there a relationship between 2 the number of pills that get sold and the 3 number of pills that get diverted? 4 MS. HENN: Objection to form. 5 THE WITNESS: It's hard to say, 6 but you could assume that the -- you 7 know -- 8 QUESTIONS BY MR. FARRELL: 9 Q. I don't want you to assume. 10 A. Yeah. 11 Q. I want you to use common sense. 12 A. Yeah. Using common sense and 13 basic logic, you could assume the more pills 14 that are out there, the more potential for 15 diversion there could be. 16 Q. So if I were to tell you that a 17 company sold 100 pills and 10 of them got 18 diverted, and then I come back to you and say 19 a year later, a thousand pills got sold, what 20 does common sense and logic tell you as 21 McKesson Corporation how many pills get 22 diverted? 23 MS. HENN: Objection to form. 24 THE WITNESS: I don't think 25 it's that easy of a connection to say
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1 your threshold, what happens to your order? 2 A. It gets blocked. 3 Q. Why? 4 A. That's the design of our 5 system. 6 Q. For what purpose? 7 A. To report suspicious orders -- 8 Q. Why is that important? 9 A. -- block. 10 To prevent diversion, to play a 11 role in preventing diversion. 12 Q. The more pills that get 13 diverted, what happens? 14 MS. HENN: Objection to form. 15 THE WITNESS: You can assume 16 that there's more abuse. 17 QUESTIONS BY MR. FARRELL: 18 Q. Do you believe there's a direct 19 correlation between the more pills that get 20 sold and the more pills that get diverted? 21 MS. HENN: Objection to form. 22 THE WITNESS: Can you rephrase 23 that question? 24 QUESTIONS BY MR. FARRELL: 25 Q. Yes.	1 that happened. There could be many 2 different reasons why a thousand 3 pills -- there may be an increase of a 4 thousand pills with zero diversion. 5 QUESTIONS BY MR. FARRELL: 6 Q. That's true. 7 Do you expect as McKesson 8 Corporation to find in general a direct 9 correlation to volume of pills sold and 10 volume of pills diverted? 11 MS. HENN: Objection to form. 12 Outside the scope. 13 THE WITNESS: Depends. I don't 14 know if there's a statistic on how 15 many pills are diverted. Again, 16 there's reasons why you may have very 17 large volumes of pills for legitimate 18 reasons and there may be zero 19 diversion. 20 QUESTIONS BY MR. FARRELL: 21 Q. That's true. Let me ask it a 22 different way. 23 Do you believe it's foreseeable 24 that the more pills you sell, the more pills 25 get diverted?

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<p>1 MS. HENN: Objection to form. 2 THE WITNESS: I would say that 3 there -- that, you know, the volume 4 of -- the more pills you have, there 5 could be, could be more to diversion. 6 It doesn't mean that there is. Or I 7 would foresee that just an increase in 8 volume is going to increase diversion. 9 There could be.</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. The more pills that are 12 diverted -- let me ask you a different way. 13 A. Okay. 14 Q. Does McKesson believe that the 15 more pills that get diverted, the more pills 16 get abused?</p> <p>17 MS. HENN: Objection to form. 18 Outside the scope.</p> <p>19 THE WITNESS: Sorry, could you 20 rephrase that one again? Let me --</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. As McKesson Corporation, do you 23 acknowledge that the more pills that get 24 diverted, the more pills get abused?</p> <p>25 MS. HENN: Same objections.</p>	<p>1 Do you know what an amicus 2 brief is? 3 A. I do not. I do not have legal 4 background.</p> <p>5 Q. Okay. McKesson Corporation is 6 a member of the Healthcare Distributors and 7 Manufacturers Association, now known as the 8 Healthcare Distributors Association, agreed?</p> <p>9 A. Healthcare Distributors 10 Management Association?</p> <p>11 Q. Management, I'm sorry, yes. 12 A. Yes. 13 Q. Okay. And on May 9, 2012, 14 Cardinal Health had gotten itself into a 15 little trouble with the DEA, hadn't it?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 THE WITNESS: I'm aware of that 18 time frame and...</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. They got in trouble with the 21 DEA, very similar to how McKesson got in 22 trouble with the DEA in 2008, agreed?</p> <p>23 MS. HENN: Objection to form.</p> <p>24 THE WITNESS: I haven't 25 reviewed this document or all the</p>
<p>1 THE WITNESS: Again, I'd say 2 what I said previously: It could -- 3 that could be a possibility. It 4 depends, but...</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Are people diverting pills to 7 engage in lawful conduct?</p> <p>8 MS. HENN: Objection to form.</p> <p>9 THE WITNESS: I don't know why 10 everybody is diverting pills every 11 single time, but generally, no.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. Right.</p> <p>14 So in general, the more pills 15 that gets diverted, the more abuse and 16 addiction we find with prescription opium 17 pills?</p> <p>18 A. There's that possibility. 19 (McKesson-Hartle Exhibit 27 20 marked for identification.)</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. I'm going to have marked what 23 is Deposition Exhibit 27. The top right-hand 24 corner is 2012_5_9.</p> <p>25 This is an amicus brief.</p>	<p>1 details, but in spirit, in general.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. So in -- on May 9th of 2012, 4 HDMA, the Healthcare Distribution Management 5 Association, wrote a brief to a federal court 6 here in Washington, DC, in support of 7 Cardinal Health and against the DEA.</p> <p>8 Was McKesson Corporation aware 9 of this amicus brief?</p> <p>10 MS. HENN: Objection to form. 11 Outside the scope.</p> <p>12 MR. FARRELL: It's actually 13 not. It's actually referenced 14 directly in the notice.</p> <p>15 MS. HENN: I'm not sure that's 16 the case, but we can disagree about 17 that.</p> <p>18 THE WITNESS: I don't know for 19 100 percent certain, but I assume so.</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. Well, I don't want you to 22 guess. This is relatively important. 23 Have you seen any 24 acknowledgement within McKesson Corporation 25 validating or affirming or reviewing or</p>

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<p>1 participating in this amicus brief?</p> <p>2 A. I have not.</p> <p>3 Q. Are you aware of McKesson being</p> <p>4 involved at all in the amicus briefs?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 THE WITNESS: I'm not.</p> <p>7 (McKesson-Hartle Exhibit 28</p> <p>8 marked for identification.)</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. I'm going to have marked</p> <p>11 Exhibit 28, 2012_05_05.</p> <p>12 Are you aware of the Wayback</p> <p>13 Machine?</p> <p>14 A. Excuse me?</p> <p>15 Q. Are you aware of the Wayback</p> <p>16 Machine?</p> <p>17 A. I am not.</p> <p>18 Q. The Wayback Machine is an</p> <p>19 Internet service that's free, and what it</p> <p>20 does is it's able to go and bring up old</p> <p>21 websites based on dates and time.</p> <p>22 And it just so happens that the</p> <p>23 Wayback Machine captured the HDMA website in</p> <p>24 May of 2012. This comes from the HDMA</p> <p>25 website, and this is a list of the board of</p>	<p>1 couple of questions about it.</p> <p>2 A. Okay.</p> <p>3 Q. If you flip to page 3...</p> <p>4 A. Of the brief?</p> <p>5 Q. Of the brief.</p> <p>6 The very bottom of the page --</p> <p>7 MS. HENN: Are you talking</p> <p>8 about the Bates numbers or the --</p> <p>9 MR. FARRELL: Yeah, the Bates</p> <p>10 number.</p> <p>11 MS. HENN: Thank you.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. It says, "HDMA's members have</p> <p>14 not only statutory and regulatory</p> <p>15 responsibilities to detect and prevent</p> <p>16 diversion of controlled prescription drugs,</p> <p>17 but undertake such efforts as responsible</p> <p>18 members of society."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Do you recognize this as an</p> <p>22 acknowledgement that all of the distributors</p> <p>23 in the country have a common law duty to the</p> <p>24 people of the United States of America to</p> <p>25 prevent diversion of controlled substances</p>
<p>1 directors.</p> <p>2 Now, what's an executive</p> <p>3 committee on a board of directors?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 Outside the scope.</p> <p>6 THE WITNESS: That's the senior</p> <p>7 leaders driving this group.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. And, Mr. McKesson Corporation,</p> <p>10 you were on the executive committee of HDMA</p> <p>11 of 2012, were you not?</p> <p>12 MS. HENN: Objection to form.</p> <p>13 Outside the scope.</p> <p>14 THE WITNESS: One of our senior</p> <p>15 leaders is.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. You're in the senior leadership</p> <p>18 of HDMA, and you signed off on an amicus</p> <p>19 brief submitted to a federal court in</p> <p>20 Washington, DC, in support of one of your</p> <p>21 colleagues and members, Cardinal Health.</p> <p>22 MS. HENN: Objection to form.</p> <p>23 Outside the scope.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. So I'm going to ask you a</p>	<p>1 because you're selling controlled substances?</p> <p>2 MR. SUDDATH: Objection.</p> <p>3 MS. HENN: Objection to form.</p> <p>4 Outside the scope.</p> <p>5 THE WITNESS: Okay. Could you</p> <p>6 ask me that again?</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. Do you recognize this as an</p> <p>9 acknowledgement that all of the distributors</p> <p>10 in the country have a common law duty to the</p> <p>11 American citizens to prevent controlled</p> <p>12 substances from being diverted into the</p> <p>13 illicit market?</p> <p>14 MR. SUDDATH: Objection.</p> <p>15 MS. HENN: Objection to form.</p> <p>16 Outside the scope.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. I mean, isn't this what we</p> <p>19 talked about earlier?</p> <p>20 A. I do.</p> <p>21 Q. You do, don't you? Yes?</p> <p>22 A. Yes.</p> <p>23 Q. Because it's not just</p> <p>24 statutory, regulatory. You're engaged in</p> <p>25 selling opium pills. You owe a duty to the</p>

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<p>1 American people to do your very best to 2 prevent diversion. 3 MS. HENN: Objection to form. 4 Outside the scope. 5 QUESTIONS BY MR. FARRELL: 6 Q. Agreed? 7 A. Agreed. 8 Q. And this is your trade 9 organization making the same representation 10 to a federal court in Washington, DC? 11 MS. HENN: Same objections. 12 Objection to form. Outside the scope. 13 THE WITNESS: Yes. 14 QUESTIONS BY MR. FARRELL: 15 Q. Next sentence: "The public 16 health dangers associated with the diversion 17 and abuse of controlled prescription drugs 18 have been well-recognized over the years by 19 Congress, DEA, HDMA and its members, and 20 public health authorities." 21 Is that all true? 22 MS. HENN: Objection to form. 23 Outside the scope. 24 THE WITNESS: Yes. 25</p>	<p>1 THE WITNESS: Oh, excuse me. 2 I also remember saying that 3 certain parts of those regulations 4 related to what a suspicious order is 5 is not clear. 6 QUESTIONS BY MR. FARRELL: 7 Q. Page 7. "The societal costs of 8 prescription drug abuse are" -- what's it 9 say? 10 A. I flipped to the wrong page. 11 Excuse me. 12 "Huge." 13 Q. And if a distributor engages in 14 unlawful conduct, should the distributor be 15 held accountable for such societal costs? 16 MS. HENN: Objection to form. 17 Outside the scope. 18 THE WITNESS: Can you repeat 19 that, please? 20 QUESTIONS BY MR. FARRELL: 21 Q. If a wholesale distributor 22 engages in unlawful conduct, should it be 23 held accountable for the societal costs of 24 prescription drug abuse? 25 MR. SUDDATH: Objection.</p>
<p>1 QUESTIONS BY MR. FARRELL: 2 Q. The next sentence. This is the 3 part that I'd like to talk to you about, the 4 highlighted part. "The agency," meaning DEA, 5 "has failed to provide meaningful guidance to 6 assist the regulated industry in complying 7 with the DEA's interpretation of its 8 implementing regulations. HDMA respectfully 9 submits that despite the agency's oft-recited 10 refrain that the regulations are clear, the 11 regulated industry does not know the rules of 12 the road because DEA has not adequately 13 explained them." 14 McKesson has said the opposite 15 publicly and to its own people, agreed? 16 MS. HENN: Object to form. 17 QUESTIONS BY MR. FARRELL: 18 Q. Remember the slide that said 19 clear? Remember your testimony about the 20 letters and the settlement agreement? You 21 said a few minutes ago it was clear. 22 A. I do remember all of that. I 23 also -- 24 MS. HENN: Object to form. 25 Go ahead.</p>	<p>1 MS. HENN: Same objections. 2 THE WITNESS: I believe 3 distributors have a responsibility in 4 preventing diversion. 5 QUESTIONS BY MR. FARRELL: 6 Q. So should they be held 7 accountable for the societal costs that are 8 documented in this pleading and referenced as 9 huge? 10 A. I think it depends. 11 MS. HENN: Objection to form. 12 QUESTIONS BY MR. FARRELL: 13 Q. Depends on what? 14 MS. HENN: Same objection. 15 Go ahead. 16 THE WITNESS: It depends on the 17 facts and circumstances and, you know, 18 the information about the specific 19 situation. 20 QUESTIONS BY MR. FARRELL: 21 Q. If a distributor repeatedly 22 fails to report suspicious orders, do you 23 believe it should be held accountable for the 24 societal costs of prescription drug abuse? 25 MR. SUDDATH: Objection.</p>

<p style="text-align: right;">Page 282</p> <p>1 MS. HENN: Objection to form. 2 THE WITNESS: And I believe it 3 depends. 4 QUESTIONS BY MR. FARRELL: 5 Q. On? 6 A. The facts and circumstances. 7 Q. How about the facts and 8 circumstances which led to McKesson paying 9 \$150 million fine? 10 MS. HENN: Objection to form. 11 THE WITNESS: Again, I think it 12 depends. 13 QUESTIONS BY MR. FARRELL: 14 Q. Do you think McKesson is partly 15 responsible for the societal costs of 16 prescription drug abuse in America? 17 MS. HENN: Objection to form. 18 THE WITNESS: Could you ask 19 that one again, please? 20 QUESTIONS BY MR. FARRELL: 21 Q. Do you think McKesson is partly 22 responsible for the societal costs of 23 prescription drug abuse in America? 24 MS. HENN: Objection to form. 25 THE WITNESS: Again, there's a</p>	<p style="text-align: right;">Page 284</p> <p>1 have the opportunity to look in the camera 2 and tell the jury whether or not you accept 3 partial responsibility for the societal costs 4 of prescription drug abuse in America. 5 MS. HENN: Objection to form. 6 Outside the scope. 7 QUESTIONS BY MR. FARRELL: 8 Q. I'd ask you to answer yes or 9 no. 10 MS. HENN: Same objections. 11 THE WITNESS: I'm not sure how 12 to answer that -- that question 13 specifically. 14 QUESTIONS BY MR. FARRELL: 15 Q. Well, you can say yes or -- 16 A. I understand that. 17 Q. -- you can say no. 18 A. I understand that. 19 MS. HENN: Objection to form. 20 QUESTIONS BY MR. FARRELL: 21 Q. If I asked you the same 22 question in your personal capacity, would 23 that help you answer the question better? 24 MS. HENN: Same objection. 25 Objection to form.</p>
<p style="text-align: right;">Page 283</p> <p>1 lot of people involved in -- it's a 2 very complicated and multi-faceted 3 issue, so... 4 QUESTIONS BY MR. FARRELL: 5 Q. We'll get to the other people 6 in a second. 7 MS. HENN: Are you done with 8 your answer? 9 THE WITNESS: I am done. 10 MS. HENN: Okay. 11 QUESTIONS BY MR. FARRELL: 12 Q. We'll get to the others in a 13 second. I want to talk about McKesson first. 14 This is your opportunity to 15 accept partial responsibility for the 16 societal costs of prescription drug abuse in 17 America; yes or no? 18 MS. HENN: Objection to form. 19 Also outside the scope. 20 THE WITNESS: So again, it 21 depends on -- it depends. 22 QUESTIONS BY MR. FARRELL: 23 Q. You're McKesson Corporation. 24 A. Right. 25 Q. You're sitting here today. You</p>	<p style="text-align: right;">Page 285</p> <p>1 THE WITNESS: Again, it 2 depends -- I would say it doesn't 3 change my answer. It depends on the 4 role that they played. 5 QUESTIONS BY MR. FARRELL: 6 Q. Well, back to McKesson 7 Corporation, which is you sitting in the 8 chair today. Knowing what you know as the 9 30(b)(6) representative, the corporate 10 designee, knowing about your past conduct, 11 knowing about the past interactions with the 12 DEA, I'm going to ask you again: Does 13 McKesson Corporation accept partial 14 responsibility for the societal costs of 15 prescription drug abuse in America? 16 MS. HENN: Objection to form. 17 THE WITNESS: Again, you know, 18 I -- we're part of the closed system, 19 so we're responsible for preventing 20 diversion. 21 QUESTIONS BY MR. FARRELL: 22 Q. So the answer is? 23 MS. HENN: Objection to form. 24 THE WITNESS: Again, I think we're responsible for something. I</p>

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1 don't know what -- how you define all 2 societal costs and -- I still believe 3 it depends on different circumstances. 4 QUESTIONS BY MR. FARRELL: 5 Q. Sir, we're not going to parse 6 out percentages. 7 A. Yeah. 8 Q. Let's just talk globally for 9 McKesson Corporation. So I don't want to put 10 words in your mouth because it's got to come 11 out of your mouth. So the answer is yes or 12 no. 13 MS. HENN: Objection to form. 14 THE WITNESS: I would say yes, 15 partially. 16 QUESTIONS BY MR. FARRELL: 17 Q. How about Purdue Pharma? Does 18 McKesson Corporation take the position that 19 Purdue Pharma is partially responsible for 20 the societal costs of prescription drug abuse 21 in America? 22 MS. HENN: Objection to form. 23 Outside the scope. 24 THE WITNESS: I'm not going to 25 answer for other companies. I'm --	1 A. I have not. 2 Q. Do you know who Gary Boggs is? 3 A. I do know Gary. 4 Q. I'll represent to you that on 5 the metadata that was provided by the -- 6 McKesson, indicates that this presentation is 7 dated in late 2012 -- wait, late 2013, I 8 think, probably before Gary Boggs came on to 9 McKesson. We'll ask him when we depose him. 10 But anyway, this is a McKesson 11 spreadsheet from Gary Boggs. Gary Boggs is 12 former DEA. 13 A. PowerPoint, not spreadsheet. 14 Q. Yeah, I'm sorry. 15 A. Okay. 16 Q. He's former DEA, correct? 17 A. Correct. 18 Q. He was the number 2 man on Joe 19 Rannazzisi, yes? 20 A. Yes. 21 Q. And as we'll see later, he was 22 actually in the room for one of the 23 presentations when DEA was negotiating with 24 McKesson on the 2008 settlement. 25 Is that your memory as a
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1 it's like I answered my question: 2 Those involved in this space, 3 depending on the facts and 4 circumstances, may be. So, yes. 5 QUESTIONS BY MR. FARRELL: 6 Q. Flip to page 8, the last 7 paragraph. Your trade organization is saying 8 that the "DEA's goal, the prevention of 9 diversion of controlled prescription drugs, 10 is, of course, a public good." 11 Does McKesson validate, 12 acknowledge and affirm that statement? 13 MS. HENN: Objection to form. 14 THE WITNESS: Absolutely. The 15 prevention of the diversion of 16 controlled substances is good for the 17 public. 18 (McKesson-Hartle Exhibit 29 19 marked for identification.) 20 QUESTIONS BY MR. FARRELL: 21 Q. Next exhibit I'm going to have 22 marked is Exhibit 29. It's Exhibit 23 2013_09_13. It's Bates stamp 24 MCK-AGMS-006000880. 25 Have you seen this document?	1 corporate entity? 2 MS. HENN: Objection to form. 3 THE WITNESS: I wasn't aware 4 that he was specifically in the room, 5 but... 6 QUESTIONS BY MR. FARRELL: 7 Q. The title of this PowerPoint 8 slide is what? 9 A. Oh, "State of prescription drug 10 abuse." 11 Q. And on the second page, talks 12 about the impact of effective compliance. 13 And it uses lots of America-related stuff, 14 eagles and flags and such. 15 Do you see that? 16 A. I do see that. 17 Q. "Protecting America from 18 Prescription Drug Diversion." 19 The next page is a history of 20 understanding the problem, and on page 4 it 21 talks about a collision course. 22 And presumably this is two 23 planes colliding in the air, and that's 24 OxyContin and Percocet. 25 Do you see that?

<p style="text-align: right;">Page 290</p> <p>1 MS. HENN: Objection to form. 2 THE WITNESS: I see that. 3 QUESTIONS BY MR. FARRELL: 4 Q. "In the late 1990s, doctors 5 aggressively prescribing painkillers - a 6 radical change in health care behavior." 7 And that radical change in 8 health care behavior did what to the number 9 of prescriptions? 10 MS. HENN: Objection to form. 11 THE WITNESS: Increased them. 12 QUESTIONS BY MR. FARRELL: 13 Q. Which resulted in an increase 14 or decrease in the number of pills McKesson 15 sold? 16 A. I don't know exact numbers, but 17 it increased. 18 Q. And then the last part, 19 "Manufacturers fueled the use of prescription 20 painkillers." 21 This is coming from your new 22 head of regulatory affairs at McKesson, 23 agreed? 24 MS. HENN: Objection to form. 25 THE WITNESS: Can you say that</p>	<p style="text-align: right;">Page 292</p> <p>1 played a role. 2 QUESTIONS BY MR. FARRELL: 3 Q. Does McKesson believe the 4 manufacturers fueled the use of prescription 5 painkillers? 6 MS. HENN: Objection to form. 7 Outside the scope. 8 THE WITNESS: I think they 9 played a role. I think there's many 10 reasons -- many things that fueled the 11 epidemic. 12 QUESTIONS BY MR. FARRELL: 13 Q. So would you rather just punt 14 on the question? 15 MS. HENN: Objection to form. 16 THE WITNESS: That's what I'm 17 going to share. That's my answer. 18 QUESTIONS BY MR. FARRELL: 19 Q. So yes or no, does McKesson 20 Corporation believe manufacturers fueled the 21 use of prescription painkillers? 22 MS. HENN: Objection to form. 23 Outside the scope. 24 THE WITNESS: Like I said, 25 my -- they're part of the system.</p>
<p style="text-align: right;">Page 291</p> <p>1 again? 2 QUESTIONS BY MR. FARRELL: 3 Q. Yeah. 4 A. He's not -- he wasn't the head 5 of regulatory affairs. 6 Q. Then, but he is now? 7 A. He's one of the leaders on the 8 regulatory affairs team. 9 Q. Okay. And this is his 10 statement that "Manufacturers fueled the use 11 of prescription painkillers." 12 Is that McKesson's position? 13 MS. HENN: Objection to form. 14 THE WITNESS: I don't know if 15 that's his own specific words or he 16 got that from a previous deck from 17 DEA. I'm not sure. 18 QUESTIONS BY MR. FARRELL: 19 Q. We'll have to ask him. 20 But I'm asking McKesson whether 21 or not it shares this view. 22 MS. HENN: Objection to form. 23 Outside the scope. 24 THE WITNESS: Manufacturers are 25 part of the closed system, like -- and</p>	<p style="text-align: right;">Page 293</p> <p>1 They played a role. 2 QUESTIONS BY MR. FARRELL: 3 Q. So the answer is? 4 A. They played a role. I wouldn't 5 say -- I wouldn't characterize it as fueled. 6 I don't know that I would use that language. 7 Q. Fair enough. 8 The next page, 5 and 6, 9 document Purdue Pharma's \$635 million fine, 10 Cephalon's \$425 million fine. 11 Going to page 7, it's comparing 12 the US rates of opioid overdose deaths, sales 13 and treatment admissions. 14 Do you see that? 15 A. I see that. 16 Q. What is the correlation between 17 opioid sales and opioid deaths? Are they 18 related or unrelated? 19 MS. HENN: Objection to form. 20 THE WITNESS: They're both 21 increasing at a similar rate. 22 QUESTIONS BY MR. FARRELL: 23 Q. So that means they're related 24 or unrelated? 25 MS. HENN: Objection to form.</p>

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<p>1 THE WITNESS: They appear to be 2 related.</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. Does McKesson believe that 5 opioid sales are related to opioid deaths?</p> <p>6 MS. HENN: Objection to form. 7 Outside the scope.</p> <p>8 THE WITNESS: Can you ask that 9 one more time, please?</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. Does McKesson believe that 12 opioid sales are related to opioid deaths?</p> <p>13 MS. HENN: Objection to form. 14 Outside the scope.</p> <p>15 THE WITNESS: The volume of 16 opioids in the market and diversion is 17 related to opioid deaths, certainly.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Page 8, the Controlled 20 Substances Act, the very last provision says, 21 "Creates checks and balances between 22 registrants to protect the public health and 23 safety."</p> <p>24 Again, this is again a 25 reaffirmation from Gary Boggs, who is now one</p>	<p>1 MS. HENN: Objection to form. 2 MR. FARRELL: You're right. 3 That's not necessarily a picture of 4 McKesson.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. You would agree with me that if 7 a McKesson sales agent came upon a pain 8 clinic and saw this, that would be a red 9 flag?</p> <p>10 MS. HENN: Objection to form. 11 THE WITNESS: It would.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. Page 17, historical comparison. 14 He's comparing the opioid crisis to the BP 15 oil spill where 11 people were killed and BP 16 paid 40 billion, plus 16 billion to the Clean 17 Water Act.</p> <p>18 Have more or less than 11 19 people been killed by the opioid crisis?</p> <p>20 A. Clearly more. 21 Q. Have more people died today 22 than 11 people?</p> <p>23 MS. HENN: Objection to form. 24 THE WITNESS: Based on the 25 statistics, yes.</p>
<p>1 of your senior regulatory affairs management, 2 acknowledging that the registrants and the 3 DEA have a duty to protect the public health 4 and safety, agreed?</p> <p>5 A. Agreed.</p> <p>6 Q. Page 13. It says, "What can 7 happen when these checks and balances 8 collapse?"</p> <p>9 What do you believe this is a 10 picture of?</p> <p>11 MS. HENN: Objection to form. 12 THE WITNESS: It's a building 13 falling down.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. A disaster?</p> <p>16 A. It's a building that's falling 17 down. Why it fell down could be a disaster.</p> <p>18 Q. What do you infer from 19 Mr. Boggs' implication?</p> <p>20 A. That things can go wrong, 21 something can happen.</p> <p>22 Q. Page 16, pictures of pain 23 clinics and people waiting in line to 24 purchase pills sold by McKesson to 25 pharmacies.</p>	<p>1 QUESTIONS BY MR. FARRELL: 2 Q. Page 24. Does McKesson 3 acknowledge and agree there is a national 4 epidemic of prescription pill addiction, 5 abuse, morbidity and mortality?</p> <p>6 MS. HENN: Objection to form. 7 THE WITNESS: Absolutely.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. Does McKesson acknowledge the 10 economic impact of this national epidemic in 11 America is greater than \$57 billion per year?</p> <p>12 MS. HENN: Objection to form. 13 Outside the scope.</p> <p>14 THE WITNESS: I don't know 15 where that -- the -- how the 57 16 billion was derived, but there's 17 clearly an -- or an economic impact to 18 the country.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. Page 37, "distributors have 21 great power." The last provision. 22 You, McKesson Corporation, 23 control the supply to downstream customers. 24 Does McKesson acknowledge that duty?</p> <p>25 MS. HENN: Objection to form.</p>

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<p>1 THE WITNESS: We control what 2 we sell.</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. So yes?</p> <p>5 A. Yes.</p> <p>6 Q. Page 38. And Mr. -- I take 7 exception with Mr. Boggs here. He attributes 8 this to some guy named Voltaire, but actually 9 this is Spiderman. "With great power comes 10 great responsibility."</p> <p>11 Does McKesson acknowledge that?</p> <p>12 You don't have to answer that 13 question.</p> <p>14 Page 41, "Detecting Suspicious 15 Orders." Most importantly, Mr. Boggs is 16 telling McKesson that you cannot ignore what.</p> <p>17 A. Warning signs.</p> <p>18 Q. Page 46, "Without sustained 19 sources of supply, major diversion schemes 20 wither away."</p> <p>21 Who are the major sources of 22 supply?</p> <p>23 MS. HENN: Objection to form.</p> <p>24 THE WITNESS: Those in the 25 closed system of distribution:</p>	<p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: There's 3 allegations.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. Same ones as before, agreed?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 THE WITNESS: Related to the 8 regulations.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Same as the 2008?</p> <p>11 MS. HENN: Objection to form.</p> <p>12 THE WITNESS: Around suspicious 13 orders.</p> <p>14 (McKesson-Hartle Exhibit 31 15 marked for identification.)</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. Exhibit 31, dated November 6, 18 2013. It's 2013_11_6, MCKMDL00409048.</p> <p>19 It's again from the United 20 States Attorney in the Northern District of 21 West Virginia. It's talking about further 22 explanations.</p> <p>23 You would agree with me this is 24 the same conduct that McKesson got in trouble 25 for in 2008?</p>
<p>1 manufacturers, distributors. There's 2 also sources, illicit sources, outside 3 of the closed network.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. They all originate within the 6 closed network, do they not?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 THE WITNESS: What do you mean 9 by "all originate"?</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. Well, Bob, in his trailer in 12 southern West Virginia, isn't making 13 OxyContin pills.</p> <p>14 A. No, I'm saying there's other --</p> <p>15 I understand your point. They come 16 ultimately from the manufacturer, 17 distributor, pharmacy.</p> <p>18 (McKesson-Hartle Exhibit 30 19 marked for identification.)</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. Exhibit 30, 2013_10_23, Bates 22 stamp MCKMDL00409046. This is October 23, 23 2013.</p> <p>24 McKesson is in trouble again 25 with the DEA, agreed?</p>	<p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: Yeah, it has to 3 do with suspicious orders, which is 4 similar.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. And it's Covington & Burlington 7 at a place called 1201 Pennsylvania Avenue, 8 Northwest.</p> <p>9 Do you know where that is?</p> <p>10 Isn't that here?</p> <p>11 MS. HENN: Old office.</p> <p>12 MR. FARRELL: The old office.</p> <p>13 All right.</p> <p>14 THE WITNESS: In town.</p> <p>15 QUESTIONS BY MR. FARRELL:</p> <p>16 Q. But again, this is the same 17 thing.</p> <p>18 Do you know Bill Ihlenfeld?</p> <p>19 A. I do not.</p> <p>20 Q. Yeah, he was the US Attorney 21 for the Northern District of West Virginia 22 and a classmate of mine. He's calling on 23 McKesson, and he's essentially telling 24 McKesson, "Hey, you're not doing your job 25 again."</p>

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<p>1 MS. HENN: Objection to form.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. "And you're dumping pills into</p> <p>4 my state."</p> <p>5 MS. HENN: Same objection.</p> <p>6 (McKesson-Hartle Exhibit 32</p> <p>7 marked for identification.)</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. Exhibit 32, 2014_1_XX,</p> <p>10 MCKMDL00409050. In fact, they put a whole</p> <p>11 presentation together.</p> <p>12 Have you seen this</p> <p>13 presentation?</p> <p>14 A. I have seen this one.</p> <p>15 Q. I'm not going to go through</p> <p>16 this because we'll go through with it a lot</p> <p>17 more tomorrow.</p> <p>18 In essence, what I'm trying to</p> <p>19 accomplish here is that you understand that</p> <p>20 the United States District Attorney for the</p> <p>21 Northern District of Ohio, and then it turns</p> <p>22 out other ones, including Colorado, are</p> <p>23 basically telling McKesson: You have a</p> <p>24 systemic failure to monitor, detect and</p> <p>25 report suspicious orders.</p>	<p>1 THE WITNESS: I haven't</p> <p>2 finished reading this, but I know</p> <p>3 there was discussions with DEA about</p> <p>4 both.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. We agree that you saw from</p> <p>7 Section 55 on McKesson has said, "If you</p> <p>8 ain't going to turn in suspicious orders, you</p> <p>9 need to have it in writing."</p> <p>10 Neither you nor Mr. Boggs has</p> <p>11 ever been able to find such a piece of</p> <p>12 writing.</p> <p>13 MS. HENN: Objection to form.</p> <p>14 (McKesson-Hartle Exhibit 34</p> <p>15 marked for identification.)</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. In fact, Exhibit 34 is the</p> <p>18 response to the presentation, March 20, 2014.</p> <p>19 It's 2014_03_20, MCKMDL00409174, from my good</p> <p>20 friend Bill Ihlenfeld's office, which</p> <p>21 basically says "bull."</p> <p>22 MS. HENN: Counsel, just to</p> <p>23 clarify, I think Exhibit 33 you</p> <p>24 might -- you have two documents in</p> <p>25 here.</p>
<p>1 Is that what they're alleging?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 THE WITNESS: Yes, that's what</p> <p>4 they're alleging.</p> <p>5 (McKesson-Hartle Exhibit 33</p> <p>6 marked for identification.)</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. Exhibit 33, this is your</p> <p>9 response, 2014_03_12, Bates-stamped</p> <p>10 MCKMDL00409116.</p> <p>11 This is you responding, saying,</p> <p>12 "Nuh-uh, no, we didn't."</p> <p>13 Does that about wrap it up?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 QUESTIONS BY MR. FARRELL:</p> <p>16 Q. You've seen this document</p> <p>17 before?</p> <p>18 A. I have not, so I'm going to go</p> <p>19 through it.</p> <p>20 Q. Okay. My summary of this is</p> <p>21 that McKesson's response is, "We don't have</p> <p>22 to report all suspicious orders. We only</p> <p>23 have to report suspicious customers."</p> <p>24 Does that sound familiar?</p> <p>25 MS. HENN: Objection to form.</p>	<p>1 Page 303</p> <p>1 MR. FARRELL: Maybe. It may</p> <p>2 have included it.</p> <p>3 MS. HENN: Ah, is that why?</p> <p>4 MR. FARRELL: Maybe.</p> <p>5 MS. HENN: Okay. That's fine.</p> <p>6 Just wanted to make sure you knew.</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. And at this point in time, it</p> <p>9 appears that McKesson had hired AGI --</p> <p>10 A. Can I read this one? I have</p> <p>11 not read this one before.</p> <p>12 Q. Okay. I'm not going to drill</p> <p>13 you on that letter. It's got --</p> <p>14 A. No, I'm about done. I just</p> <p>15 wanted to read the summary here, too.</p> <p>16 Okay. Thank you.</p> <p>17 Q. Now, skipping through all of</p> <p>18 the other correspondence because we'll get</p> <p>19 into that more tomorrow, more recently, as a</p> <p>20 result of all of this, even though McKesson</p> <p>21 is denying liability, you understand that</p> <p>22 McKesson did enter into another settlement</p> <p>23 agreement?</p> <p>24 A. I understand that.</p> <p>25 (McKesson-Hartle Exhibits 35,</p>

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<p>1 36 and 37 marked for identification.)</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. 2017_01_05A, 35, Exhibit 35,</p> <p>4 MCKMDL00355322, the settlement agreement and</p> <p>5 release.</p> <p>6 Exhibit 37, 2017_01_5B,</p> <p>7 MCKMDL00355477.</p> <p>8 MS. HENN: Did you skip 36?</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. I didn't.</p> <p>11 36 will be 2017_01_05B, the</p> <p>12 compliance addendum.</p> <p>13 MS. HENN: 37.</p> <p>14 MR. FARRELL: Oh, okay, I'm</p> <p>15 sorry. But it's okay because we'll</p> <p>16 just put 36 as the administrative</p> <p>17 memorandum, which is 2017_01_5C,</p> <p>18 MCKMDL0355513.</p> <p>19 MS. HENN: And, Counsel, we've</p> <p>20 been going about an hour, so if we</p> <p>21 could have a break at a good stopping</p> <p>22 point. It doesn't have to be this</p> <p>23 second, but if there's one very soon,</p> <p>24 that would be great.</p> <p>25 MR. FARRELL: Yeah, very soon.</p>	<p>1 core of it.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. So let's just be fair. There</p> <p>4 were certain distribution facilities that</p> <p>5 utterly failed to fulfill their obligations</p> <p>6 under federal law to monitor, detect, halt</p> <p>7 and report suspicious orders, which resulted</p> <p>8 in McKesson paying the largest fine in the</p> <p>9 history of the DEA; true or not true?</p> <p>10 MS. HENN: Objection to form.</p> <p>11 THE WITNESS: Could you</p> <p>12 simplify that question a little bit?</p> <p>13 QUESTIONS BY MR. FARRELL:</p> <p>14 Q. Yeah.</p> <p>15 McKesson wasn't following the</p> <p>16 law and got fined \$150 million?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 THE WITNESS: We acknowledged</p> <p>19 that certain orders did not get</p> <p>20 flagged in our system.</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. Thousands.</p> <p>23 MS. HENN: Objection to form.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. Thousands of orders?</p>
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<p>1 MS. HENN: Great.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. Just to acknowledge, McKesson's</p> <p>4 still is denying liability, and this time the</p> <p>5 cost has become more prohibitive with the</p> <p>6 fine, 150 million.</p> <p>7 MS. HENN: Objection to form.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. Agreed?</p> <p>10 A. Agreed. We settled with the</p> <p>11 settlement agreement, agreed.</p> <p>12 Q. McKesson's distribution</p> <p>13 facilities were systematically failing to</p> <p>14 report suspicious orders and resulted in a</p> <p>15 \$150 million fine assessed by the DEA and</p> <p>16 paid by McKesson Corporation; true or not</p> <p>17 true?</p> <p>18 MS. HENN: Objection to form.</p> <p>19 THE WITNESS: We did pay that</p> <p>20 fine, \$150 million.</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. Because you were systematically</p> <p>23 not reporting suspicious orders?</p> <p>24 MS. HENN: Same objection.</p> <p>25 THE WITNESS: That was at the</p>	<p>1 A. Orders.</p> <p>2 Q. Like some facilities reported</p> <p>3 none.</p> <p>4 MS. HENN: Objection to form.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Yes?</p> <p>7 A. Systematically none.</p> <p>8 Q. Systematically none.</p> <p>9 And it wasn't just an isolated</p> <p>10 distribution facility. It was several</p> <p>11 different facilities across the spectrum at</p> <p>12 McKesson had utterly failed to comply with</p> <p>13 federal regulations to prevent diversion of</p> <p>14 controlled substances?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 THE WITNESS: We believed we</p> <p>17 were in good faith working with DEA as</p> <p>18 part of the 2008 agreement to report</p> <p>19 customers and report orders in a</p> <p>20 different way that was mutually agreed</p> <p>21 upon. So --</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. Yeah, I'm not asking --</p> <p>24 A. -- I would say --</p> <p> MR. FARRELL: You're right.</p>

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1 You're right. 2 THE WITNESS: I know you say 3 zero, but I -- you know, there are 4 situations and scenarios where we 5 reported based on what we agreed to 6 with the DEA, based on that settlement 7 agreement. 8 So I understand systematically 9 they weren't being reported, but they 10 were being reported in other ways. 11 QUESTIONS BY MR. FARRELL: 12 Q. Sitting here today does 13 McKesson Corporation acknowledge that it 14 utterly failed in its obligations to prevent 15 diversion of opium pills into the American 16 illicit market? 17 MS. HENN: Objection to form. 18 THE WITNESS: No, I don't 19 believe we utterly failed. We, again, 20 in good faith over the years have 21 worked with DEA, taken guidance, 22 developed programs, enhanced programs, 23 evolved them over the course of time. 24 So I wouldn't characterize it 25 as utterly failing.	1 as partially true? 2 MS. HENN: Objection to form. 3 THE WITNESS: Again, we -- 4 partially, in the second agreement, we 5 did acknowledge that, you know, we 6 didn't identify all the suspicious 7 orders that we could have. 8 QUESTIONS BY MR. FARRELL: 9 Q. In fact, in some distribution 10 facilities you didn't identify any? 11 MS. HENN: Objection to form. 12 QUESTIONS BY MR. FARRELL: 13 Q. This isn't like we missed a 14 needle in a haystack. This is we missed the 15 hay. 16 MS. HENN: Objection to form. 17 THE WITNESS: So the thing I 18 would just share is that, again, all 19 of those orders were blocked and not 20 shipped. And we may not have 21 systematically, as I mentioned 22 earlier, reported, but -- 23 MR. FARRELL: Hold on. 24 MS. HENN: Wait, he's not done 25 with his answer.
1 QUESTIONS BY MR. FARRELL: 2 Q. Well, when you report zero 3 suspicious orders over years at the same time 4 selling tens of millions of opium pills into 5 a community, you're not meeting your 6 obligations under federal law, agreed? 7 MS. HENN: Objection to form. 8 THE WITNESS: Again, there's 9 certain times in which we acknowledged 10 that we did not report orders. That 11 does not mean that we did not conduct 12 diligence, that we did not evolve our 13 program to help prevent. 14 QUESTIONS BY MR. FARRELL: 15 Q. And I understand the desire to 16 want to say in good faith you did your best. 17 What I'm asking for is a very simple 18 acknowledgement that McKesson was not 19 following the law and got fined for it on two 20 occasions. 21 MS. HENN: Objection to form. 22 THE WITNESS: Those were the 23 allegations. 24 QUESTIONS BY MR. FARRELL: 25 Q. Do you accept those allegations	1 THE WITNESS: I'm just 2 reiterating the point I made earlier 3 about the 2008 agreement, mutually 4 discussing with DEA the fact that we 5 were focusing on customers and would 6 report suspicious orders in a mutually 7 format -- a mutually-agreed-upon 8 format. 9 So you say zero, but it may not 10 always be zero. 11 QUESTIONS BY MR. FARRELL: 12 Q. Just to be fair with you, we're 13 going to take a break. 14 A. All right. 15 Q. I have the transactional data 16 in Cuyahoga and Summit County from McKesson 17 sales of opium pills. I also have the 18 suspicious order reports. 19 So let's be clear: McKesson 20 didn't get in trouble for blocking orders and 21 not reporting them. McKesson paid a record 22 fine for shipping suspicious orders and not 23 reporting them. 24 MS. HENN: Objection to form. 25 THE WITNESS: Say that again.

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<p>1 I want to be very clear what I heard.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. Me, too.</p> <p>4 A. Yeah.</p> <p>5 Q. You're telling me that</p> <p>6 McKesson's conduct that it admitted to,</p> <p>7 McKesson's position is that it blocked</p> <p>8 suspicious orders and then just simply didn't</p> <p>9 report them in the right way. That's your</p> <p>10 position?</p> <p>11 A. We systematically -- based on</p> <p>12 the design of our system, orders were</p> <p>13 blocked.</p> <p>14 Q. You believe that McKesson was</p> <p>15 blocking all the suspicious orders and paid</p> <p>16 \$150 million because of the manner in which</p> <p>17 it reported?</p> <p>18 A. Earlier I said we did</p> <p>19 acknowledge that some orders, not all, we</p> <p>20 didn't block.</p> <p>21 Q. Okay. So let's get back --</p> <p>22 A. We didn't -- let me rephrase</p> <p>23 that. We acknowledge that our system may not</p> <p>24 have detected orders that could be deemed as</p> <p>25 suspicious.</p>	<p>1 without reporting it, is that unlawful?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 THE WITNESS: I think it</p> <p>4 depends.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. On?</p> <p>7 A. There could be a technical</p> <p>8 glitch --</p> <p>9 Q. Okay.</p> <p>10 A. -- or some computer error. I</p> <p>11 mean --</p> <p>12 Q. I'm talking about hundreds and</p> <p>13 hundreds and hundreds of orders that are</p> <p>14 red-flagged by McKesson and shipped anyway</p> <p>15 without reporting a suspicious order.</p> <p>16 The US Attorney for the</p> <p>17 Northern District of West Virginia doesn't</p> <p>18 say this was a technical glitch. He says it</p> <p>19 was a systematic failure by your company to</p> <p>20 abide by West Virginia law -- or federal law.</p> <p>21 You paid a record fine, and</p> <p>22 you're disavowing the underlying conduct</p> <p>23 today?</p> <p>24 MS. HENN: Objection to form.</p> <p>25 THE WITNESS: I'm just trying</p>
<p>1 Q. And that the orders that your</p> <p>2 system did detect as suspicious, you still</p> <p>3 shipped anyway without reporting them?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: No.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. You believe that's not true?</p> <p>8 A. Based on my understanding of</p> <p>9 our systems and how things work in -- when</p> <p>10 they hit a threshold and they're blocked,</p> <p>11 those do not get shipped.</p> <p>12 Q. All right. So fair --</p> <p>13 A. That's how we define those</p> <p>14 suspicious orders.</p> <p>15 Q. Fair enough.</p> <p>16 Let me ask you this: If your</p> <p>17 system detects a suspicious order and you</p> <p>18 ship it anyway and you don't report it, is</p> <p>19 that unlawful?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 THE WITNESS: Please say that</p> <p>22 again.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. If your system detects a</p> <p>25 suspicious order and you ship it anyway</p>	<p>1 to communicate that our system that</p> <p>2 was designed to detect suspicious</p> <p>3 orders using the concept of thresholds</p> <p>4 blocked all of the -- blocked those</p> <p>5 suspicious orders.</p> <p>6 We recognize that and</p> <p>7 acknowledge that it may not have</p> <p>8 picked up on all of the suspicious</p> <p>9 orders and...</p> <p>10 MR. FARRELL: One more and</p> <p>11 we'll take a quick break.</p> <p>12 MS. HENN: If it's okay, I'd</p> <p>13 like to take it now. It's been now an</p> <p>14 hour and 15 minutes. It's pretty</p> <p>15 tiring to be a witness. So if we</p> <p>16 could just take a five-minute break,</p> <p>17 that would be great.</p> <p>18 MR. FARRELL: Okay.</p> <p>19 MS. HENN: Thank you.</p> <p>20 VIDEOGRAPHER: The time is 4:29</p> <p>21 p.m. We're going off the record.</p> <p>22 (Off the record at 4:29 p.m.)</p> <p>23 VIDEOGRAPHER: The time is</p> <p>24 4:45 p.m. We're back on the record.</p> <p>25 MR. FARRELL: Thank you.</p>

<p style="text-align: right;">Page 318</p> <p>1 So we have about an hour left; 2 we've been going about -- almost six 3 hours. So by agreement we've kept the 4 deposition days to seven hours long, 5 and I'll honor that.</p> <p>6 MS. HENN: More than by 7 agreement. It's also ordered by the 8 judge.</p> <p>9 MR. FARRELL: No question.</p> <p>10 MS. HENN: Just a slight 11 clarification.</p> <p>12 MR. FARRELL: No question. 13 Seven hours of answering questions is 14 enough for anybody.</p> <p>15 MS. HENN: It is.</p> <p>16 MR. FARRELL: That being said, 17 I know there's a burden on travel and 18 arrangements; we have a tight 19 schedule. So what I'm going to do is 20 I'm going to finish up some topics, 21 and I'm going to state for the record 22 that I have not been able to get 23 through all of the designated topics 24 today.</p> <p>25 That being said, there are some</p>	<p style="text-align: right;">Page 320</p> <p>1 Obviously, it's going to be 2 subject to the objection of your 3 lawyers, and I just wanted to place 4 that on the record.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Jumping in real quick, I'm not 7 going to spend a whole lot of time on this; I 8 have a very specific question.</p> <p>9 Before we get into the 10 document, there's a reference in here about 11 heroin, and I just wanted to see if I could 12 cut to the chase with you.</p> <p>13 A. Okay.</p> <p>14 Q. As the McKesson corporate 15 representative, do you acknowledge that abuse 16 of prescription opium pills is a gateway to 17 the initiation of heroin?</p> <p>18 MS. HENN: Objection to form. 19 Outside the scope.</p> <p>20 THE WITNESS: Based on 21 everything that I've read and in the 22 media and statistics and discussion, I 23 would agree -- agree to that.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. If you abuse prescription</p>
<p style="text-align: right;">Page 319</p> <p>1 additional topics that you were not 2 designated for. There's essentially 3 two notices.</p> <p>4 So what we're -- what I'm going 5 to do is recommend that I finish up 6 the topics that I want to get to, and 7 then tomorrow is your fact deposition. 8 And what we'll do is work out with 9 counsel if there are any of these 10 questions that can be answered in 11 writing to avoid you having to come 12 back and testify on things that can be 13 answered.</p> <p>14 And then in addition, there are 15 records and there are -- there is 16 transactional data historically and 17 suspicious order report historically 18 that have not been disclosed yet 19 because of our tight schedules that 20 I'll -- I will be going to ask -- 21 eventually to ask for some additional 22 time from you to finish the stuff we 23 didn't get to finish and to ask 24 questions about documents that have 25 not been disclosed yet.</p>	<p style="text-align: right;">Page 321</p> <p>1 opiates, the CDC says that you're 40 times 2 more likely to initiate heroin use.</p> <p>3 Does McKesson acknowledge 4 that -- that prescription opiate pill abuse 5 is a driving factor in the heroin epidemic 6 we're also experiencing?</p> <p>7 MS. HENN: Objection to form. 8 Outside the scope.</p> <p>9 THE WITNESS: Yeah, it's a 10 factor.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. That was easy.</p> <p>13 A. Yeah.</p> <p>14 Q. All right. Back to this amicus 15 business.</p> <p>16 (McKesson-Hartle Exhibit 38 17 marked for identification.)</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. I'm going to mark as 20 Exhibit 38, it's 2016_04_04. This is another 21 amicus brief. This one is Masters 22 Pharmaceutical.</p> <p>23 Does McKesson acknowledge that 24 in 2016 when this amicus brief was submitted 25 that it was still on the executive committee</p>

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<p>1 of HDMA?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 Outside the scope.</p> <p>4 THE WITNESS: I can't speak to</p> <p>5 that. If I saw a list of who was on</p> <p>6 the executive committee...</p> <p>7 (McKesson-Hartle Exhibit 39</p> <p>8 marked for identification.)</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Fair enough. Exhibit 39,</p> <p>11 2016_04_05, the Wayback Machine.</p> <p>12 So looking at the Exhibit 39,</p> <p>13 can you acknowledge that McKesson was on the</p> <p>14 executive board of HDMA --</p> <p>15 A. Yes.</p> <p>16 Q. -- at the time that this amicus</p> <p>17 brief was submitted?</p> <p>18 A. Yes.</p> <p>19 Q. Have you had a chance to review</p> <p>20 the amicus brief?</p> <p>21 A. I had a chance to look at some</p> <p>22 of the highlighted sections.</p> <p>23 Q. So let's go to 2016_04_04,</p> <p>24 page 5.</p> <p>25 A. Page 5.</p>	<p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. You're stumbling toward it.</p> <p>3 A. Yeah.</p> <p>4 Q. Let's go to page 6, a little</p> <p>5 more direct. The second highlighted</p> <p>6 provision: "As the final order in this case</p> <p>7 underscores, however, DEA now appears to have</p> <p>8 changed its position to require that</p> <p>9 distributors not only report suspicious</p> <p>10 orders but investigate and halt suspicious</p> <p>11 orders."</p> <p>12 This is a 2016 document by your</p> <p>13 trade organization, of which McKesson sits on</p> <p>14 the executive board, and its telling the DC</p> <p>15 Circuit Court of Appeals that it does not</p> <p>16 have a duty to investigate and halt</p> <p>17 suspicious orders.</p> <p>18 Does McKesson validate this</p> <p>19 position?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 THE WITNESS: Can you rephrase</p> <p>22 that for me?</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Yeah.</p> <p>25 In 2016, your trade</p>
<p>1 Q. Down the right-hand side, you</p> <p>2 can see two-thirds of the way down it starts,</p> <p>3 "DEA." The one below that. Yeah.</p> <p>4 "DEA has required distributors</p> <p>5 not only to report suspicious orders but to</p> <p>6 investigate orders by interrogating</p> <p>7 pharmacies and physicians and take action to</p> <p>8 halt suspicious orders before they are</p> <p>9 filled. Those added obligations would</p> <p>10 significantly expand a report-only duty of</p> <p>11 distributors under the long-standing</p> <p>12 regulatory scheme and impose impractical</p> <p>13 obligations on distributors."</p> <p>14 Is that McKesson's position?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 Outside the scope.</p> <p>17 THE WITNESS: Obviously we're</p> <p>18 part of the organization. In parts,</p> <p>19 you know, I agree with the added --</p> <p>20 what it would -- you know, the added</p> <p>21 responsibility or time that it would</p> <p>22 take to -- you know, to investigate</p> <p>23 each order.</p> <p>24 I don't know if I'm answering</p> <p>25 your question, but...</p>	<p>1 organization is telling the second highest</p> <p>2 court in the land, the DC Circuit Court of</p> <p>3 Appeals, that the DEA is now requiring them</p> <p>4 to investigate and halt suspicious orders.</p> <p>5 Haven't we agreed that's been</p> <p>6 the duty since 1971?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 Outside the scope.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Tough position to defend, isn't</p> <p>11 it?</p> <p>12 MS. HENN: Same objections.</p> <p>13 THE WITNESS: You know, again,</p> <p>14 I -- I recognize that other</p> <p>15 distributors have different systems</p> <p>16 and have worked with DEA over the</p> <p>17 years on different methodologies,</p> <p>18 whether it's a threshold to block it</p> <p>19 or it's a hold and investigate and</p> <p>20 then block it. And so, you know, I</p> <p>21 recognize that.</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. You recognize this position is</p> <p>24 problematic given your experience, McKesson</p> <p>25 Corporation, with the DEA?</p>

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<p>1 MS. HENN: Objection to form. 2 THE WITNESS: I recognize that 3 I'm sure there's lots of disagreements 4 about this.</p> <p>5 QUESTIONS BY MR. FARRELL: 6 Q. Yeah. 7 But we're still trying to 8 figure out from internal communications 9 whether or not McKesson signed off on this 10 brief. 11 Are you aware of whether or not 12 they signed off on this?</p> <p>13 MS. HENN: Objection to form. 14 THE WITNESS: I don't -- I am 15 not aware of the process that goes 16 into signing off on these briefs and 17 what that specific looks like. I know 18 how trade organizations work and how 19 they get to a point of consensus. 20 QUESTIONS BY MR. FARRELL: 21 Q. Let me ask you in a different 22 way. 23 We talked about the original 24 enactment of the Controlled Substances Act 25 where the penalty for engaging in unlawful</p>	<p>1 accept or reject the position your trade 2 organization is taking regarding the 3 interpretation of the shipping requirement 4 and reporting requirement? 5 MS. HENN: Objection to form. 6 Outside the scope. 7 THE WITNESS: I apologize. Can 8 you ask -- ask me again or rephrase? 9 Do we accept -- 10 QUESTIONS BY MR. FARRELL: 11 Q. Yeah. 12 The sentence you see up there 13 on the screen -- 14 A. Yeah. 15 Q. -- submitted by your trade 16 organization to which McKesson sits as an 17 executive board member, this is a position in 18 a legal document submitted to the second 19 highest court in the United States of 20 America. 21 Sitting here today, does 22 McKesson Corporation accept or reject this 23 position? 24 MS. HENN: Objection to form. 25 Outside the scope.</p>
<p>1 conduct should be prohibitive. 2 Do you remember talking about 3 that this morning? 4 A. I do. 5 Q. And so in 2008, McKesson 6 Corporation paid \$13 million, and in 2017, 7 McKesson paid \$150 million. 8 What would happen in today's 9 world if McKesson went to the DEA and said, 10 "We don't have a duty to investigate and halt 11 suspicious orders"? What do you reckon would 12 happen then? 13 MS. HENN: Objection to form. 14 Outside the scope. 15 THE WITNESS: I'm not sure 16 exactly what would happen, but they 17 wouldn't be thrilled. 18 QUESTIONS BY MR. FARRELL: 19 Q. So what do you think the fine 20 will be next time? 21 A. I can't speculate what it would 22 be. It depends on the facts and 23 circumstances and... 24 Q. So just simply stated, sitting 25 here today, McKesson Corporation, do you</p>	<p>1 THE WITNESS: I'd say we accept 2 this -- accept this -- 3 QUESTIONS BY MR. FARRELL: 4 Q. You accept -- 5 A. -- as part of that 6 organization. 7 Q. What is that? 8 A. As being part of that 9 organization. 10 Q. So your position today is 11 McKesson does not have a duty to investigate 12 and halt suspicious orders? 13 MS. HENN: Objection to form. 14 QUESTIONS BY MR. FARRELL: 15 Q. You're in a tough spot here. 16 A. I can tell you what our program 17 does, right? We halt -- we block suspicious 18 orders. 19 Q. All right. So let's go 20 further. Page 8. "The 2006 letter from Joe 21 Rannazzisi fails to explain how the statutory 22 command of the US Code 823 Section E, a 23 command that the Attorney General consider 24 when adjudicating an application for 25 registration of the applicant's maintenance</p>

<p style="text-align: right;">Page 354</p> <p>1 MS. HENN: Objection.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. That's what it looks like.</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: I know that's how</p> <p>6 that was -- that was pulled and the</p> <p>7 time frame that the blocked orders</p> <p>8 were sent, transmitted to</p> <p>9 headquarters.</p> <p>10 Prior to that, based on</p> <p>11 discussions with DEA, out of the 2008</p> <p>12 settlement, you know, there were</p> <p>13 customers -- I can't say if there were</p> <p>14 customers specifically in this county,</p> <p>15 I'm talking about in terms of, you</p> <p>16 know, the program. We know there were</p> <p>17 reports of suspicious orders, along</p> <p>18 with customers.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. All right. So to be clear,</p> <p>21 right now all I can tell you is what the</p> <p>22 record is in this litigation. And on behalf</p> <p>23 of Summit County, it appears that the first</p> <p>24 suspicious order that was reported, based on</p> <p>25 the data provided by McKesson, was August 1,</p>	<p style="text-align: right;">Page 356</p> <p>1 So assuming that fact to be</p> <p>2 true, what would we need to see in the due</p> <p>3 diligence file to justify the shipping of an</p> <p>4 order that got flagged by your omit report?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 THE WITNESS: I'm trying to</p> <p>7 understand the situation. So can we</p> <p>8 talk through it again --</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Yeah.</p> <p>11 A. -- in terms of the mechanics of</p> <p>12 the here?</p> <p>13 Q. So we know there were a whole</p> <p>14 bunch of transactions in May of 2011 that</p> <p>15 resulted in 62,000 pills being delivered into</p> <p>16 Summit County.</p> <p>17 A. Understood.</p> <p>18 Q. It looks like your system</p> <p>19 flagged Rite Aid 3151 for oxycodone base code</p> <p>20 9143 on May 20 but did not report it to the</p> <p>21 DEA. And I'll suggest to you, and we don't</p> <p>22 have to do it today, that if you go and look</p> <p>23 at the transactions, while these two --</p> <p>24 May 20th two oxycodone orders appear on your</p> <p>25 omit report, other oxycodone on the same day</p>
<p style="text-align: right;">Page 355</p> <p>1 2013.</p> <p>2 So if you, McKesson</p> <p>3 Corporation, are aware of suspicious orders</p> <p>4 that predate this, I'd love to see them.</p> <p>5 A. Understood.</p> <p>6 Q. Now, if we take column D and we</p> <p>7 filter it with just 2011/05. So what this</p> <p>8 is, is you recall there's 62,000 pills that</p> <p>9 were distributed into Summit County in May</p> <p>10 of 2011.</p> <p>11 Remember that?</p> <p>12 A. Yes.</p> <p>13 Q. This is the omit report for the</p> <p>14 number of orders from Rite Aid 3151 that got</p> <p>15 flagged by your system.</p> <p>16 How many of those orders got</p> <p>17 reported?</p> <p>18 A. Based on the spreadsheet, none.</p> <p>19 Q. So what I'm trying to figure</p> <p>20 out is if you look at -- on May 20, it looks</p> <p>21 like your system flagged oxycodone 7.5s on</p> <p>22 the omit report. And if we go and we look,</p> <p>23 it wasn't turned in to the DEA. And when we</p> <p>24 go and we pull up the transaction data, it</p> <p>25 appeared you shipped it anyway.</p>	<p style="text-align: right;">Page 357</p> <p>1 did not. And in fact, even though you</p> <p>2 flagged the May 20 order, you still sold more</p> <p>3 pills later in the month.</p> <p>4 So I'm trying to figure out</p> <p>5 what I would see in a file, what documents</p> <p>6 would I need to see to make sense of the fact</p> <p>7 that your system is only flagging a couple of</p> <p>8 the orders of 62,000, number one, and number</p> <p>9 two, make sense of how these flagged orders</p> <p>10 didn't get reported to the DEA.</p> <p>11 What documents theoretically</p> <p>12 would exist?</p> <p>13 MS. HENN: Objection to form.</p> <p>14 THE WITNESS: I'm not sure what</p> <p>15 documents specifically would exist. I</p> <p>16 think there's a couple components to</p> <p>17 this, or pieces to talk through. One</p> <p>18 of them is this time frame, 2000 --</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. '11.</p> <p>21 A. Correct.</p> <p>22 -- was during the time frame</p> <p>23 where post the 2008 agreement, in</p> <p>24 conversations with DEA and discussions about</p> <p>25 the fact that we were -- we were going to</p>

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<p>1 Waterloo Road, Akron, number 2 pharmacy?</p> <p>2 Look at what the number 4 one</p> <p>3 is, just right down the street.</p> <p>4 So again, I think it's worth</p> <p>5 looking into, don't you think?</p> <p>6 A. I agree. I would love to have</p> <p>7 more context and get into the details.</p> <p>8 Q. Okay. This is going to draw an</p> <p>9 objection from your counsel. What would be a</p> <p>10 reason to set a threshold for 999,999?</p> <p>11 MS. HENN: Objection to form.</p> <p>12 THE WITNESS: There are -- in</p> <p>13 the system there are subsets to base</p> <p>14 codes, and so a -- for example, 91 --</p> <p>15 91 -- 9193, which is hydrocodone, may</p> <p>16 have some subsets for reporting</p> <p>17 purposes for us. There may be a</p> <p>18 subset, and there could be one or more</p> <p>19 of these. There could be a subset for</p> <p>20 10 milligram. There could be a subset</p> <p>21 for the single entity hydrocodone.</p> <p>22 And so we can carve those out</p> <p>23 from reporting purposes. That's --</p> <p>24 the 999,999 does not mean that they</p> <p>25 can get 999,000 pills. It means that</p>	<p>1 THE WITNESS: You know, I</p> <p>2 can't -- I can't say on the data and</p> <p>3 the comparison compared to -- those</p> <p>4 are data points to look at. They're</p> <p>5 big numbers, no doubt.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. Do you agree that one of the</p> <p>8 foreseeable harms of engaging in unlawful</p> <p>9 conduct in the distribution of prescription</p> <p>10 opioids is diversion?</p> <p>11 MS. HENN: Objection. Form.</p> <p>12 THE WITNESS: Could you ask</p> <p>13 that again?</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. One of the harms --</p> <p>16 A. You said foreseeable first, but</p> <p>17 harms --</p> <p>18 Q. I'll go back and do it.</p> <p>19 Do you agree that one of the</p> <p>20 foreseeable harms of engaging in unlawful</p> <p>21 conduct in the distribution of prescription</p> <p>22 opioids is diversion?</p> <p>23 MS. HENN: Objection to form.</p> <p>24 THE WITNESS: I think it can</p> <p>25 be.</p>
<p>1 that base code does not conflict with</p> <p>2 the main parent -- what I would call a</p> <p>3 parent base code.</p> <p>4 And so it's for reporting</p> <p>5 purpose only. It has nothing to do</p> <p>6 with allowing the amount of that total</p> <p>7 base code. The parent trumps that</p> <p>8 one. It's for reporting purposes</p> <p>9 only.</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. Do you know how many doses</p> <p>12 McKesson distributed of oxycodone nationwide</p> <p>13 from January 1, 2006 and December 31, 2014?</p> <p>14 This is from ARCOS.</p> <p>15 A. I don't have that number.</p> <p>16 MS. HENN: Objection to form.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. 9,288,258,480 doses of</p> <p>19 oxycodone nationwide. That's more than</p> <p>20 there's people in our country.</p> <p>21 Distributed 423 million</p> <p>22 oxycodone doses in the state of Ohio. That's</p> <p>23 over 119 billion milligrams of oxycodone.</p> <p>24 Do you think that's too many?</p> <p>25 MS. HENN: Objection to form.</p>	<p>1 Page 363</p> <p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. Do you agree that filling</p> <p>3 suspicious orders is a direct and proximate</p> <p>4 cause of prescription opioid abuse,</p> <p>5 addiction, morbidity and mortality?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 THE WITNESS: Filling specific</p> <p>8 orders?</p> <p>9 MS. HENN: Suspicious orders is</p> <p>10 the word he used.</p> <p>11 THE WITNESS: Suspicious</p> <p>12 orders.</p> <p>13 There's a lot of reasons for --</p> <p>14 that orders may get flagged as</p> <p>15 suspicious, so I think it depends.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. That's fair.</p> <p>18 A. They'll get flagged as an order</p> <p>19 of unusual size, frequency or pattern and not</p> <p>20 mean that it's suspicious or</p> <p>21 diversion-related.</p> <p>22 Q. Do you believe the prescription</p> <p>23 opiate epidemic is an immediate hazard to</p> <p>24 public health and safety?</p> <p>25 MS. HENN: Objection to form.</p>

<p style="text-align: right;">Page 366</p> <p>1 THE WITNESS: How do you -- how 2 are you defining "immediate hazard"?</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. A hazard.</p> <p>5 A. A hazard?</p> <p>6 Sure.</p> <p>7 MR. FARRELL: Okay. We will 8 adjourn with the reservation of rights 9 for one day, continuing the subject 10 matters that most interest the 11 plaintiffs in the MDL in the 30(b)(6) 12 notices.</p> <p>13 MS. HENN: And, I mean, we will 14 object to continuing past the limit 15 set by the Court. We feel that there 16 was a lot of time today that was spent 17 asking legal questions that could have 18 been spent on topics.</p> <p>19 MR. FARRELL: There was also a 20 lot of time spent reading documents 21 that were listed in my 30(b)(6).</p> <p>22 MS. HENN: Documents that you 23 put in front of the witness and wanted 24 him to read.</p> <p>25 But more importantly, I wanted</p>	<p style="text-align: right;">Page 368</p> <p>1 CERTIFICATE</p> <p>2 I, CARRIE A. CAMPBELL, Registered 3 Diplomate Reporter, Certified Realtime 4 Reporter and Certified Shorthand Reporter, do 5 hereby certify that prior to the commencement 6 of the examination, Nathan J. Hartle was duly 7 sworn by me to testify to the truth, the 8 whole truth and nothing but the truth.</p> <p>9 I DO FURTHER CERTIFY that the 10 foregoing is a verbatim transcript of the 11 testimony as taken stenographically by and 12 before me at the time, place and on the date 13 hereinbefore set forth, to the best of my 14 ability.</p> <p>15 I DO FURTHER CERTIFY that I am 16 neither a relative nor employee nor attorney 17 nor counsel of any of the parties to this 18 action, and that I am neither a relative nor 19 employee of such attorney or counsel, and 20 that I am not financially interested in the 21 action.</p> <p>22 CARRIE A. CAMPBELL, 23 NCRA Registered Diplomate Reporter 24 Certified Realtime Reporter 25 California Certified Shorthand 26 Reporter #13921 27 Missouri Certified Court Reporter #859 28 Illinois Certified Shorthand Reporter 29 #084-004229 30 Texas Certified Shorthand Reporter #9328 31 Kansas Certified Court Reporter #1715 32 Notary Public 33 Dated: August 3, 2018</p>
<p style="text-align: right;">Page 367</p> <p>1 to ask the court reporter to please 2 designate this transcript 3 provisionally highly confidential, 4 which is required under the deposition 5 protocol, and I also wanted to reserve 6 the right to read and sign.</p> <p>7 I have no questions, and so I 8 think we are finished.</p> <p>9 VIDEOGRAPHER: Okay. The time 10 is 5:47 p.m., July 31, 2018. Going 11 off the record completing today's 12 videotaped session.</p> <p>13 (McKesson-Hartle Exhibit 40 14 marked for identification.)</p> <p>15 (Deposition concluded at 5:47 p.m.)</p> <p>16 -----</p>	<p style="text-align: right;">Page 369</p> <p>1 INSTRUCTIONS TO WITNESS</p> <p>2 Please read your deposition over 3 carefully and make any necessary corrections. 4 You should state the reason in the 5 appropriate space on the errata sheet for any 6 corrections that are made. 7 After doing so, please sign the 8 errata sheet and date it. You are signing 9 same subject to the changes you have noted on 10 the errata sheet, which will be attached to 11 your deposition. 12 It is imperative that you return 13 the original errata sheet to the deposing 14 attorney within thirty (30) days of receipt 15 of the deposition transcript by you. If you 16 fail to do so, the deposition transcript may 17 be deemed to be accurate and may be used in 18 court.</p>